

CITY OF LOS ALAMITOS

3191 Katella Avenue
Los Alamitos, CA 90720

AGENDA PLANNING COMMISSION REGULAR MEETING

Wednesday, October 28, 2015 – 7:00 PM

NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the Community Development Department or on the City's website at www.cityoflosalamitos.org once the agenda has been publicly posted.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Community Development Department, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the Community Development Department at (562) 431-3538, extension 303, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the Planning Secretary at the meeting for individuals with hearing impairments.

Persons wishing to address the Planning Commission on any item on the Planning Commission Agenda shall sign in on the Oral Communications Sign In sheet which is located on the podium once the item is called by the Chairperson. At this point, you may address the Planning Commission for up to ***FIVE MINUTES*** on that particular item.

1. **CALL TO ORDER**
2. **ROLL CALL**
 - Chair Riley
 - Vice-Chair Cuiilty
 - Commissioner Andrade
 - Commissioner DeBolt
 - Commissioner Grose
 - Commissioner Loe
 - Commissioner Sofelkanik
3. **PLEDGE OF ALLEGIANCE**

4. ORAL COMMUNICATIONS

At this time any individual in the audience may address the Planning Commission and speak on any item within the subject matter jurisdiction of the Commission. If you wish to speak on an item listed on the agenda, please sign in on the Oral Communications Sign In sheet located on the podium. **Remarks are to be limited to not more than five minutes.**

5. APPROVAL OF MINUTES

A. Approve the Minutes for the Regular Meeting of September 23, 2015.

6. CONSENT CALENDAR

None.

7. STAFF REPORTS

A. Community Development Block Grant (CDBG) Discussion Regarding Future Fund Use.

Discuss the use and priority of Community Development Block Grant (CDBG) funds with interested community members per a request from the Orange County Community Resources Department. The Planning Commission is acting as a conduit to provide an opportunity for interested parties to provide comments.

Recommendation:

1. Hold the community meeting and take testimony as necessary.

**B. Resolution of Intention No. 15-17
Marijuana Regulation**

Consideration of a Resolution of Intention by the Planning Commission to make zoning code changes concerning the sales, cultivation, distribution, delivery, storage and manufacturing of "Cannabis, Marijuana and Medical Marijuana."

Recommendation:

1. Adopt Resolution No. 15-17, entitled, "A RESOLUTION OF INTENTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, TO DIRECT STAFF TO DRAFT AN ORDINANCE TO ADDRESS THE SALES, CULTIVATION, DISTRIBUTION, DELIVERY, STORAGE AND MANUFACTURING OF CANNABIS, MEDICAL MARIJUANA AND MARIJUANA AND BRING BACK SUGGESTED CODE CHANGES TO FUTURE MEETINGS OF THE PLANNING COMMISSION (ZOA 15-07) (CITYWIDE) (CITY INITIATED.)"

8. PUBLIC HEARINGS

A. Zoning Ordinance Amendment No. 15-04

Administrative Permitting of Restaurants with Outside Seating Areas

Providing parameters to Staff to make zoning code changes that will allow restaurant outside seating on private sidewalks as a permitted use. The draft ordinance will be brought back to the Planning Commission for a public hearing for recommendation to the City Council (Citywide) (City initiated.)

Recommendation:

1. That the Planning Commission discuss outdoor dining guidelines and then direct Staff to bring back suggested code changes to future meetings of the Planning Commission concerning the land use known as "Restaurants, with Outside Seating" (ZOA 15-04) (Citywide) (City Initiated).

B. Discussion of Nonconforming Use Provisions

Discuss with Staff desired provisions relating to Nonconforming Use Provisions, Zoning Ordinance Amendment (ZOA) 15-05 (Citywide) (City initiated).

Recommendation:

1. Open the Public Hearing; and,
2. Provide direction to Staff as to desired amendments to the City's nonconforming provisions.

9. ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR

A. Discussion of Holiday schedule for November and December.

10. COMMISSIONER REPORTS

None.

11. ADJOURNMENT

APPEAL PROCEDURES

Any final determination by the Planning Commission may be appealed to the City Council, and must be done so in writing at the Community Development Department, within twenty (20) days after the Planning Commission decision. The appeal must include a statement specifically identifying the portion(s) of the decision with which the appellant disagrees and the basis in each case for the disagreement, accompanied by an appeal fee of \$1,000.00 in accordance with Los Alamitos Municipal Code Section 17.68 and Fee Resolution No. 2008-12.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 72 hours prior to the meeting.

Tom Oliver
Associate Planner

Date

10/21/15

**MINUTES OF PLANNING COMMISSION MEETING
OF THE CITY OF LOS ALAMITOS**

REGULAR MEETING – September 23, 2015

1. CALL TO ORDER

The Planning Commission met in Regular Session at 7:00 PM, Wednesday, September 23, 2015, in the Council Chambers, 3191 Katella Avenue; Chair Riley presiding.

2. ROLL CALL

Present: Commissioners: Chair John Riley
Vice-Chair Mary Anne Cuiilty
Larry Andrade
Art DeBolt
Wendy Grose
Gary Loe
Victor Sofelkanik

Absent: None

Staff: Development Services Director Steven Mendoza
Associate Planner Tom Oliver
Assistant City Attorney Lisa Kranitz

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chair Riley.

4. ORAL COMMUNICATION

Chair Riley opened the meeting for Oral Communication for items not on the agenda.

There being no persons wishing to speak, Chair Riley closed Oral Communication.

5. APPROVAL OF MINUTES

A. Approve the Minutes of the Regular Meeting of August 26, 2015.

Motion/Second: Grose/Cuiilty

Carried 6/0/1 (Andrade abstained): The Planning Commission approved the minutes of the Regular meeting of August 26, 2015.

6. CONSENT CALENDAR

A. Introduction of New Commissioner Larry Andrade

Development Services Director Mendoza introduced Commissioner Andrade and welcomed him to the Commission.

Assistant City Attorney Lisa Kranitz administered the Oath of Office to Commissioner Andrade.

Chair Riley welcomed Commissioner Andrade to the Commission.

7. PUBLIC HEARINGS

None.

8. STAFF REPORTS

A. Resolution of Intention No. 15-15

Consideration of a Resolution of Intention by the Planning Commission to make Zoning Code changes that would ministerially permit restaurant outside seating on private sidewalks as a permitted use in order to help satisfy this action of the City's new General Plan (Citywide) (City initiated).

Associate Planner Tom Oliver summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Development Services Director Steven Mendoza explained that what Staff has put together is a sample from Santa Monica who probably has the most experience in protecting residents in outside dining. He further explained that Staff started to look into other ways of approving outside dining instead of going through the onerous expensive way of getting a Conditional Use Permit (CUP) and they found one that did it for small (below 200 square feet) properties; Staff thought this might be appealing to the Commission to use as a basis to start the discussion. Mr. Mendoza explained what the normal process for obtaining a CUP is.

Commissioner Andrade pointed out that Santa Monica covered a lot of information and he felt it was a lot more detailed than he thought it would have been for what they wanted to accomplish but it does lay down a foundation and guidelines for the applicants to follow. He indicated he would be very interested in looking at the guidelines that Belmont Shore has set up.

Staff indicated they will provide this information to the Commission at their next scheduled meeting.

Commissioner Grose inquired if an applicant serves alcohol outside his establishment, will the applicant still have to apply and come before the Planning Commission for a CUP.

Mr. Mendoza indicated that that is up to the Planning Commission as they are designing the rules and regulations. He pointed out that the Commission will need to look at whether they are trying to simplify a lot of steps or just a few and will also need to look at the genesis of what they may be trying to do.

In response to Mr. Mendoza's question regarding whether this appears too onerous, Commissioner Andrade indicated he didn't feel that way but it is something that the Commission should go through item by item and see if it works for Los Alamitos or not.

Mr. Mendoza pointed out that this does not allow them to put anything on public sidewalks as that would entail obtaining an encroachment permit which would be a different process.

Motion/Second: Grose/Cuilty

Unanimously Carried: The Planning Commission approved the adoption of Resolution No. PC 15-15, entitled, "A RESOLUTION OF INTENTION OF THE PLANNING COMMISSION OF LOS ALAMITOS, CALIFORNIA, TO DIRECT STAFF TO BRING BACK SUGGESTED CODE CHANGES TO THE PLANNING COMMISSION CONCERNING THE LAND USE KNOWN AS 'RESTAURANTS, WITH OUTSIDE SEATING' (ZOA 15-04) (CITYWIDE) (CITY INITIATED)".

- B. Resolution of Intention No. 15-16**
Consideration of a Resolution of Intention by the Planning Commission to make Zoning Code changes that would repair inconsistencies in Chapter 17.64 (Nonconforming Uses and Structures) of the Los Alamitos Municipal Code (Citywide) (City initiated).

Assistant City Attorney Lisa Kranitz summarized the Staff report, referring to the information contained therein.

Motion/Second: DeBolt/Grose

Unanimously Carried: The Planning Commission approved the adoption of Resolution No. PC 15-16, entitled, "A RESOLUTION OF INTENTION OF THE PLANNING COMMISSION OF LOS ALAMITOS, CALIFORNIA, TO DIRECT STAFF TO BRING BACK SUGGESTED CODE CHANGES TO THE PLANNING COMMISSION CONCERNING LOS ALAMITOS MUNICIPAL CODE CHAPTER 17.64 – NONCONFORMING USES AND STRUCTURES (ZOA 15-05) (CITYWIDE) (CITY INITIATED)."

9. ITEMS FROM THE DEVELOPMENT SERVICES DIRECTOR

Development Services Director Mendoza reported that although there is not a full-fledged application filed as yet, Staff met twice with a hotel developer that is going to file an application to build a Fairfield Inn on the vacant lot.

10. COMMISSIONER REPORTS

Commissioner Grose

- Asked if it would be possible to include Commissioner Daniel in the Christmas party proceedings since he just last month resigned from the Planning Commission.

Mr. Mendoza explained that the Commission should probably ask one or two of the Council members as there are sponsoring the party in which they're showing the Commissioners their appreciation for the work they've done all year.

Commissioner Loe

- Asked what had happened to Spin Pizza.

Mr. Mendoza indicated that Spin Pizza has closed; the owner is coming up with a new concept and he is interested in applying for outside dining.

11. ADJOURNMENT

The Planning Commission adjourned at 7:25 PM.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

City of Los Alamitos

Planning Commission

Agenda Report
Staff Report

October 28, 2015
Item No: 7A

To: Chair Riley and Members of the Planning Commission

Via: Steven A Mendoza, Development Services Director

From: Tom Oliver, Associate Planner

Subject: Community Development Block Grant (CDBG) Discussion Regarding Future Fund Use

Summary: Orange County Community Resources Department requests that the City hold a community meeting to discuss the use and priority of Community Development Block Grant (CDBG) funds with interested community members. The Planning Commission is acting as a conduit to provide an opportunity for interested parties to provide comments.

Recommendation: Hold the community meeting and take testimony as necessary.

Noticing

The public was notified of this community meeting by an advertisement in the News Enterprise on October 7, 2015.

Background

The Orange County Community Resources Department filters Federal Community Development Block Grant (CDBG) monies down to smaller cities such as Los Alamitos. The Program provides federal funds to cities with populations under 50,000 for programs that are targeted towards community development. The funds are commonly used for neighborhoods that have a substantial number of low, very low, and extremely low-income residents, and can be used for Senior or ADA (Americans with Disabilities Act) projects as well. CDBG shows preference for projects that meet the criteria in the table below:

Community Need Type	Priority Needs Level
Community Development Need	
01 Acquisition of Real Property 570.201(a)	High
02 Disposition 570.201(b)	Medium*
Public Facilities and Improvements Needs 570.201(c)	
03 Public Facilities and Improvements (General)	Medium
03A Senior Centers	High
03B Handicapped Center	Medium
03C Homeless Facilities	High
03D Youth Centers	Medium
03E Neighborhood Facilities/Libraries	High
03F Parks and/or Recreational Facilities	Medium
03G Parking Facilities	Medium
03H Solid Waste Disposal Improvements	Medium
03I Flood Drain Improvements	High
03J Water/Sewer Improvements	High
03K Street Improvements	High
03L Sidewalks	High
03M Child Care Centers	Medium
03N Tree Planting	Medium
03O Fire Stations/Equipment	Medium
03P Health Facilities	Medium
03Q Abused and Neglected Children Facilities	Medium
03R Asbestos Removal	Low*
03S Facilities for AIDS Patients (not operating costs)	Medium

The Grant funds are transferred from HUD to the County annually for use by participating agencies. These funds may be pursued through competitive grant applications sent to the County. The group of participating cities is small so the potential for funding is fairly high. Participating cities help to form the annual plan for spending CDBG funds allowing the City a voice in establishing the criteria on which grant applications will be judged. Once grants are awarded, the County assists cities in managing the projects and preparing required reports to HUD. Whether or not the City seeks funding, the County oversees the program.

To assure citizen participation in the design and implementation of the City's allocation of CDBG funds, the Community Development Department seeks input from a wide variety of community members. Priorities, goals, and objectives are established from citizen input used in applying for future CDBG grants. Citizen participation is an important aspect in this process as it establishes the needs of the community from the grass roots level. This information is provided to the County of Orange to incorporate into its report to the Federal Government (HUD).

A public meeting is held to collect information regarding community needs prior to the City deciding where CDBG funds will best be distributed and to obtain comments from citizens on the use of funds prior to submitting an application. This hearing is also held to give the community an opportunity to review and comment on the proposed use of funding and on the performance of the CDBG programs in administration, distribution, and implementation of federal funds. The public hearing is held in a centrally located, handicap accessible building with reasonable accommodation provided for persons with disabilities.

Discussion

The City regularly submits applications to Orange County Community Resources for CDBG funds through the program. Larger cities apply directly to the Federal Government for such funds. As a smaller city, Los Alamitos seeks the oversight of the County when using such funds.

The City of Los Alamitos has used such grants for years, often being awarded CDBG funds to improve Public Facilities within the City's Low Income Census Tracts. If not an ADA or a project for seniors, the CDBG activities should serve residents within the City's usual seven (7) target areas:

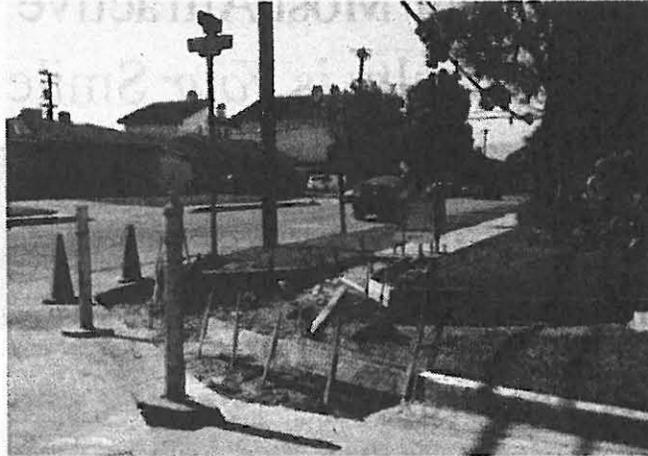
1. Apartment Row – Bloomfield Street to Lexington Drive
2. Old Town East
3. Old Town West
4. Royal Oak Park
5. Country Square
6. Joint Forces Training Base (JFTB), including Parkewood
7. Area bound by Cerritos Avenue, Bloomfield Street, Katella Avenue, and the eastern boundary of the City

During the current Fiscal Year 2015-16, CDBG funds are being used for an alley rehabilitation project in the Apartment Row neighborhood. The City recently used the funding to bring ADA ramps up to current standards in Apartment Row. Below is a list of project ideas from City Staff that could be applied for this year:

	Project	Approximate Cost
1	<p><u>Administration of Alley Reconstruction, Between Pine & Reagan, Katella to Florista</u></p> <p>Nonprofit agencies and a city owned parking lot border this thoroughfare of Old Town. Reconstructing the current asphalt alley to 6 inch thick concrete would enable residents and clients of these agencies and those with disabilities to have an easier travel path to the rear of the properties. In particular, wheelchair access will be greatly increased. This project would include full reconstruction of the alley.</p>	<p>Alley = \$100,000.00 Includes 10% match</p>
2	<p><u>Construction Management, Design, Administration, and Construction of various ADA Accessibility Ramps and repair of broken or lifted sidewalks throughout the City</u></p> <p>A 2015 ADA study was conducted by a consultant for the City. The report identified certain infrastructure that does not meet current ADA standards. As identified in that report, the City has been developed with a variety of handicapped accessible sidewalk standards over the years, and</p>	<p>427 Sidewalk Repairs = \$90,000.00</p> <p>Approximately 25 ADA Curb Ramps = \$60,000.00</p> <p>Total =\$150,000.00 Includes 10% match</p>

these ramps must be upgraded to current ADA standards in order to comply with state and federal guidelines. Further in this ADA study, there are sidewalk lifts and grade problems in the City that have been identified for repair.	
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Attachment: 1. News Enterprise Advertisement



The City of Los Alamitos is seeking input from residents and property owners for future Public Facility and Improvements projects funded by Community Development Block Grants.

The Orange County Community Resources department filters federal Community Development Block Grant (CDBG) monies down to cities with populations under 50,000 for community development programs. The funds are commonly used for neighborhoods that have a substantial number of low-income residents, and can be used to upgrade public facilities to meet Americans with Disabilities Act requirements.

The Planning Commission will host a community meeting on October 28, 2015 to obtain input prior to application for these funds. Previous projects have been alley rehabilitation, accessible sidewalks, curb and gutter improvements, and sidewalk replacement.

Wednesday, October 28, 2015 at 7:00 p.m.

**City Council Chambers
3191 Katella Avenue
Los Alamitos, CA 90720**



**Questions or comments, call:
Steven A. Mendoza
Development Services Director
Phone: 562-431-3538 Ext. 300
Email: smendoza@cityoflosalamitos.org**

City of Los Alamitos

Planning Commission

Agenda Report
Staff Report

October 28, 2015
Item No: 7B

To: Chair Riley and Members of the Planning Commission

Via: Steven Mendoza, Development Services Director

Subject: Resolution of Intention 15-17
Marijuana Regulation

Summary: Consideration of a Resolution of Intention by the Planning Commission to make zoning code changes concerning the sales, cultivation, distribution, delivery, storage and manufacturing of "Cannabis, Marijuana and Medical Marijuana."

Recommendation: Staff recommends that the Planning Commission adopt Resolution No. 15-17 entitled, "A RESOLUTION OF INTENTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, TO DIRECT STAFF TO DRAFT AN ORDINANCE TO ADDRESS THE SALES, CULTIVATION, DISTRIBUTION, DELIVERY, STORAGE AND MANUFACTURING OF CANNABIS, MEDICAL MARIJUANA AND MARIJUANA AND BRING BACK SUGGESTED CODE CHANGES TO FUTURE MEETINGS OF THE PLANNING COMMISSION (ZOA 15-07) (CITYWIDE) (CITY INITIATED)."

Applicant: City Initiated

Location: Citywide

Approval Criteria: In order to implement zoning changes required by the 2035 Los Alamitos General Plan, it is necessary for the Planning Commission to first adopt a Resolution of Intention in accordance with Los Alamitos Municipal Code Section 17.70.020.

Discussion

Recent legislation signed by the Governor (AB 266, AB 243 & SB 643) warrants the adoption of code that will need to be effective March, 2016 in order to be effective. In order to address this legislation, the Commission is required to kick it off via a Resolution of Intent. The League of California Cities is recommending beginning this process immediately to meet the March, 2016 implementation requirement. The Medical Marijuana Regulation and Safety Act consist of three separate pieces of legislation:

- AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) – Establishes dual licensing structure requiring state license *and* a local license or permit. Department of Consumer Affairs heads overall regulatory structure imposing health and safety and testing standards.
- AB 243 (Wood) – Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- SB 643 (McGuire) - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

This legislation protects local control in the following ways:

- Dual licensing: A requirement in statute that all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- Effect of Local Revocation of a Permit or License: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- Enforcement: Local governments may enforce state law in addition to local ordinances if they request that authority, and if it is granted by the relevant state agency.
- State law penalties for unauthorized activity: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- Expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

Attached is the League of California Cities Power Point presentation on the topic. To begin this process, Staff recommends that the Planning Commission approve the attached Resolution of Intention and direct Staff to bring back suggested code changes to a future meeting of the Planning Commission.

Attachment: 1) *Planning Commission Resolution 15-17*
 2) *League of California Cities Presentation*

RESOLUTION NO. 15-17

A RESOLUTION OF INTENTION OF THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, TO DIRECT STAFF TO DRAFT AN ORDINANCE TO ADDRESS THE SALES, CULTIVATION, DISTRIBUTION, DELIVERY, STORAGE AND MANUFACTURING OF CANNABIS, MEDICAL MARIJUANA AND MARIJUANA AND BRING BACK SUGGESTED CODE CHANGES TO FUTURE MEETINGS OF THE PLANNING COMMISSION (ZOA 15-07) (CITYWIDE) (CITY INITIATED).

WHEREAS, the Planning Commission is interested in reevaluating Chapter 17 of the Los Alamitos Municipal Code as it relates to the land use known as "Marijuana" "Cannabis" and "Medical Marijuana"; and,

WHEREAS, Los Alamitos Municipal Code Section 17.70.020 requires that the Planning Commission begin this process through adopting a Resolution of Intention; and,

WHEREAS, the Planning Commission considered this item on October 28, 2015.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Los Alamitos, California finds that the above recitals are true and correct.

SECTION 2. The Planning Commission resolves to initiate consideration of a City-initiated Zoning Ordinance Amendment incorporating code changes concerning the sales, cultivation, distribution, delivery, storage and manufacturing of "Cannabis, Marijuana and Medical Marijuana," and will direct Staff to return to the Planning Commission with recommended wording of the amendments.

PASSED, APPROVED, AND ADOPTED this 28th day of October, 2015.

John Riley, Chair

ATTEST:

Steven Mendoza, Secretary

APPROVED AS TO FORM:

Lisa Kranitz
Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Steven Mendoza, Planning Commission Secretary of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Planning Commission held on the 28th day of October, 2015, by the following vote, to wit:

AYES:

NOES:
ABSENT:
ABSTAIN:

Steven Mendoza, Secretary



Informational Webinar: Medical Marijuana Regulation and Safety Act

- This is the first of at least two webinars designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
 - Explain how this legislation protects local control;
 - Review the details of what each bill does;
 - Highlight specific regulatory issues that require immediate attention from local governments;
 - Discuss timelines for implementation
 - Field your questions

Note: Some of the provisions of the new laws discussed in this webinar are not included in the Medical Marijuana Regulation and Safety Act.



Medical Marijuana Regulation and Safety Act

- Presenters:
 - Tim Cromartie, Legislative Representative, League of California Cities
 - Lauren Michaels, Legislative Affairs Manager, California Police Chiefs Association
 - Steve McEwen, Attorney at Law; Partner with Burke, Williams & Sorensen, LLP

Medical Marijuana Regulation and Safety Act

• Medical Marijuana: Schedule of Events

• Webinar Dates:

- Tuesday, October 20
- Thursday, November 12



• Informational Briefings

- San Leandro - Monday, November 9
- Eureka - Monday, November 16
- Sacramento - Wednesday, January 13
- Pasadena - Thursday, January 14
- Riverside - Friday, January 15
- Fresno - Monday, January 25
- San Luis Obispo - Thursday, January 28
- San Diego - Tuesday, February 9

Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license *and* a local license or permit. Department of Consumer Affairs heads overall regulatory structure imposing health and safety and testing standards.
- **AB 243 (Wood)**– Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

Medical Marijuana Regulation and Safety Act

- This legislation protects local control in the following ways:
- **Dual licensing**: A requirement in statute that all marijuana businesses must have **both** a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- Expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

Key State Medical Marijuana Laws Following AB 243, AB 266, and SB 643

- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.
- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). Provides criminal immunity for patients and primary caregivers for possession and cultivation of marijuana if a doctor has recommended the marijuana for medical use.
- Medical Marijuana Program (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.

Medical Marijuana Regulation and Safety Act

Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Jurisdictions that currently ban, or that may wish to ban, deliveries or mobile dispensaries should be aware that under AB 266, they will need to have an ordinance in place that affirmatively identifies and prohibits this activity.
- **Cultivation ordinances:** AB 243 contains a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016 will lose the authority to regulate or ban cultivation within their city limits. The state will become the sole licensing authority. The author has agreed to fix this via clean-up legislation, but to be safe, cities are advised to enact emergency ordinances by the end of February to protect themselves.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- Establishes a statewide regulatory scheme with the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA) at its head.
- Provides for dual licensing: both a state license, and a local permit or license, *issued according to local ordinances*, are required.
- Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
- Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015.
- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- **Labor Peace:** Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.

Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Places the Dept. of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites.
- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assign joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.

Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians;
- Imposes fines (\$5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business;
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations;

Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Upholds local power to levy fees and taxes.

Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health & Safety Code, or a testing laboratory.
- “Delivery” also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. (Business & Professions Code 19300.5(m))

Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- *“Deliveries” can only be made by a dispensary and in a city, county, or city and county that does not **explicitly prohibit** it by local ordinance. Business & Professions Code 19340(a). See also Section 19340(b)(1).*
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to explicitly prohibit deliveries.
- **Timing:** State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting “delivery” (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting “delivery” of ‘medical marijuana’ and “medical cannabis products” (as defined in AB 266) as a business within the city.

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**

- AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
- A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**

- However...If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)).
-
- Under a “permissive” zoning code, “any use not enumerated in the code is presumptively prohibited.” *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- City #1: Municipal Code that expressly prohibits cultivation of marijuana or expressly prohibits medical marijuana: No need to take any action.
-
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) to cultivate medical marijuana: No need to take any action.
-
- City #3: Municipal Code that does not expressly prohibit nor expressly regulates (requires a permit or license or other entitlement) to cultivate medical marijuana and is not a “permissive zoning” code. *Need to take action (see next slide)*
- City #4: Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use: **Need to take action (see next slide).**

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #3 : What needs to be done before March 1, 2016?**
- **City #3:** The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 *if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016.* (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #4 : What needs to be done before March 1, 2016?**
- **City #4: If City #4 prohibits the cultivation of medical marijuana “under principles of permissive zoning,” then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)).**

Medical Marijuana Regulation and Safety Act

- **Cultivation - General Guidelines for Cities**
- Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #3.
- If confirmed that your city's zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
 - (1) States that H & S 11362.777(b)(3) states that Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
 - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
 - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
 - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.



Medical Marijuana Regulation and Safety Act

- Timeline for Implementation
 - None of the bills specify a timeline for implementation
 - This is partly due to various departments being at different stages in terms of their readiness
 - The rough timeline we have been given for state licensing to begin is January 2018
 - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances



Medical Marijuana Regulation and Safety Act

● Questions?

City of Los Alamitos

Planning Commission

Agenda Report
Public Hearing

October 28, 2015
Item No: 8A

To: Chair Riley and Members of the Planning Commission

Via: Steven Mendoza, Development Services Director

From: Tom Oliver, Associate Planner

Subject: Zoning Ordinance Amendment 15-04
Administrative Permitting of Restaurants with Outside Seating Areas

Summary: Providing parameters to Staff to make zoning code changes that will allow restaurant outside seating on private sidewalks as a permitted use. The draft ordinance will be brought back to the Planning Commission for a public hearing for recommendation to the City Council (Citywide) (City initiated).

Recommendation: Staff recommends that the Planning Commission discuss outdoor dining guidelines and then direct Staff to bring back suggested code changes to future meetings of the Planning Commission concerning the land use known as "Restaurants, with Outside Seating" to comply with the new 2015-2035 General Plan (ZOA 15-04) (Citywide) (City Initiated).

Applicant: City Initiated

Project Location: Citywide

Approval Criteria: Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.

Noticing: Since the number of real property owners exceeds 1,000, notices announcing the Public Hearing were published as a 1/8 page ad in the News Enterprise on October 14, 2015 for a hearing on October 28, 2015.

Environmental: An environmental determination will be made after parameters are provided.

Discussion

Creating an environment where shoppers and diners feel safe and comfortable outdoors is one way to provide shopping interest and a social life to a neighborhood. Outdoor dining areas are a great way to initiate this type of environment. Outdoor seating areas along sidewalks are recognized to be part of a “complete street” which means that pedestrians, private businesses, and all modes of transportation can share the public right-of-way. The City’s code does not currently encourage this land use. Accordingly, one of the land use actions of the new General Plan is to “[a]mend the zoning ordinance to incentivize and encourage outdoor dining.”

The “Restaurants, with outside seating areas” land use in the Los Alamitos Municipal Code (“LAMC”) requires an applicant to obtain a Conditional Use Permit (CUP). During the CUP process, Staff and Commissioners must take the design and parking requirements for these areas into account when deciding whether or not to approve outdoor dining. In reality, few parcels in the City contain the extra parking that this would require since developers push the extent of the indoor space and its corresponding parking to the limit in their designs to receive the maximum payback for their land investment. When restaurants operate in these developments, they look at private sidewalk space as a way to expand or decrease seating capacity based on economic conditions.

In 2005, the last overhaul of the zoning code made small changes to the parking requirements, but from the beginning of the City’s founding, the requirements have morphed. For instance, in 1969 retail parking was calculated a 1 space per 300 square feet, and today it is 1/250. Outside dining was not called out as a land use at that time. These parking requirement changes have resulted in many buildings appearing to be under-parked by today’s standard. Not only do the parking requirements for outside seating create an impediment, but the CUP process itself requires costs (*around \$2000.00*) and time (*two to three months*). Staff feels that some outside dining, especially in a walkable environment, should not include the requirement to obtain a CUP or have a parking space available based on the square footage of the outdoor dining.

Staff has observed that as of late, a number of restaurants now regularly ignore the LAMC and have been placing outside seating on their private sidewalks without obtaining the required CUP, regardless of the legalities or safety concerns. This need for outside seating is often a result of a successful business. The new General Plan encourages the future downtown area along Los Alamitos Boulevard to be developed as a walkable environment with less driving involved. Ancillary outside seating helps to encourage this lifestyle.

Recommendation

Staff recommends that the Planning Commission spend some time in discussion of a ministerially-permitted outside seating ordinance in order to help satisfy what is an action of the City’s new General Plan. To begin this process, in September, the

Planning Commission approved a Resolution of Intention and directed Staff to bring back suggested code changes to a future meeting of the Planning Commission. Tonight, with research provided by Staff in the agenda packet, the Commission has the opportunity to discuss the permitting process for outdoor dining in the City of Los Alamitos.

Attached to this report are helpful items that Staff feels will inform this discussion. The first document is a compiled list of random conditions of approval for outdoor dining from other cities. The next documents are visually appealing program documents presenting guidelines that are based on the conditions that have been instituted for outdoor dining in other cities.

Attachments:

- 1) *Condition Menu*
- 2) *Long Beach Occupation of Public Walkways*
- 3) *Murietta Guidelines*
- 4) *Salt Lake City Guidelines*

Condition Examples for Restaurants with Outside Seating From Other Cities

PURPOSE

Santa Monica - The purpose of this document is to establish standards for outdoor dining including outdoor dining in areas less than 200 sq. ft. located in commercial districts and the Residential Visitor Commercial District. The Guidelines accommodate pedestrian circulation, meet applicable code requirements as well as create well-designed and attractive outdoor dining areas.

Newport Beach (One-year Pilot Program) - A zoning clearance application shall be filed with the Community Development Director together with all information and materials specified by the Director. No fee shall be required for this application. For applications on public property, additional permits may be required by the Public Works Department, and shall be filed with the Public Works Director. No fee shall be required for a dining encroachment permit.

Pacific Grove – The intent of the design standards for outdoor dining is to insure quality outdoor seating area, the appropriate use of the public sidewalk for outdoor dining and safety for pedestrians in Pacific Grove.

Santa Barbara – “Outdoor dining” means the use of City sidewalks and public rights-of-way for the consumption of food or beverages in conjunction with the operation of a food service establishment properly licensed for such service under state and county health regulations and which provides on-premises customer seating.

CONSISTENCY WITH GENERAL PLAN AND ZONING DISTRICT DESIGNATIONS

Los Alamitos - Policy 1.5 Outdoor dining. Encourage existing and new restaurants to incorporate outdoor dining along Los Alamitos Boulevard.

Los Alamitos - Action 1.11 Outdoor dining. Amend the zoning ordinance to incentivize and encourage outdoor dining.

ELIGIBLE USES

Newport Beach – The property shall be located within a nonresidential zoning district within the Balboa Village, which is defined as the area ...

Newport Beach - The use of the existing building or suite shall be an eating and drinking establishment.

Hermosa Beach - Outdoor seating shall be incidental and accessory to food establishments for patrons of the food establishment to consume food or beverages purchased during the hours that food or beverages are offered for sale, but not to exceed 7:00 a.m. to 11:00 p.m. in the C-3 zone and zones that allow C-3 uses, or 7:00 a.m. to 10:00 p.m. in the other zones where this use is permitted. Employee break areas physically separated and restricted from public use are regulated by subsection (B) (3) of this section above.

Hermosa Beach - The outdoor seating area authorized by this subsection (B)(6) shall not exceed a total of two hundred (200) not contain more than one (1) seat per fifteen (15) square feet of area. Where the outdoor seating area is located on both private property and the public right-of-way, the cumulative outdoor seating area shall not exceed (200) square feet of floor area and shall not contain more than one (1) seat per fifteen (15) square feet of area. Seating shall not be reserved, and waiter/waitress table service shall not be provided. Additional parking is not required.

Santa Monica - Outdoor dining that is an accessory use and contiguous to a legally established restaurant or other eating or drinking establishment, which provides full menu food services, take out food service, and specialty food service (e.g., cookies, ice cream). Outdoor dining areas of less than 200 sq. ft. may be approved administratively and shall not require additional parking. Outdoor dining areas that exceed 200 sq. ft. shall comply with parking requirements established by Santa Monica Municipal Code Section 9.04.10.08.040.

Santa Monica - Temporary, mobile or freestanding food service providers or vendors are not eligible.

Santa Monica - Establishments that serve alcoholic beverages in their outdoor dining area are required to meet the additional specific standards outlined in this document for alcohol service as well as all other applicable state and local requirements and any City-wide alcohol policies adopted.

Santa Monica - Outdoor dining areas must be designated for combined food and beverage service. Food must be purchased in order to be served alcohol. All restaurants are required to post appropriate signage or print on the menu: "Food purchase is required in all outdoor dining areas. Alcohol may not be served without food".

Santa Monica - Outdoor dining areas of less than 200 sq. ft. are not required to provide additional parking.

ELIGIBLE SITES AND CONFIGURATIONS

Hermosa Beach - The outdoor seating area shall be located proximate to the business providing the seating, such as adjacent to the building, within courtyards, or on

balconies or decks, excluding any roof deck. Outdoor seating areas shall not be arranged so as to create food courts. Outdoor seating areas shall not reduce, be located within, or damage any required landscaped area.

Santa Monica - The areas covered by these standards includes areas within the City's Commercial Districts and the Residential Visitor Commercial District.

Santa Monica - The elevation of the outdoor dining area shall be at sidewalk level; and only semi-permanent barriers shall be permitted; License Agreements shall be issued.

Santa Monica - All outdoor dining areas shall be fully accessible to the physically handicapped, as required by Title 24. Adequate pedestrian access must be provided which is considered to be eight (8) feet of unobstructed access between chair/table and curb edge or street furniture; e.g. bus benches, meters, etc. Access may be less under certain circumstances, but not less than five (5) feet of unobstructed areas.

Santa Monica - Establishments which serve alcoholic beverages are required to provide a physical barrier that meets the requirements of this document and those of the Alcoholic Beverage Control Board.

Santa Monica - The dining area should promote a visual relationship to the street and the restaurant establishment to which it is ancillary.

Long Beach – Sidewalk dining is not permitted on sidewalks less than 10 feet wide.

DEVELOPMENT STANDARDS

Santa Monica - If new barriers are provided they are recommended to be of semi-permanent barrier construction. They must conform to installation standards and be removable. Barriers utilizing any type of stretched canvas material must be strung through reinforced eyelets. Barriers should have rubberized footings to avoid damage to the sidewalk. NOTE: Modification to sidewalk surfaces, such as borings for recessed sleeves or post holes, is not permitted.

Santa Monica - All barriers must be able to withstand inclement outdoor weather.

Santa Monica - The maximum height of an opaque barrier shall be three feet six inches (3'6") from the sidewalk level including the height of any landscaping. The area between the top of the barrier and the bottom of any awning shall remain open. No transparent barriers (such as Plexiglas or plastic) are permitted between the top of the opaque barrier and the bottom of the awning.

Santa Monica - Retractable awnings and umbrellas may extend over the entire area, but there shall be no permanent roof or shelter over the sidewalk. Overhead connecting bars between the barrier structure and awning are strictly prohibited.

Santa Monica - Awnings shall be adequately secured, retractable and shall comply with provisions of the Uniform Building Code. Awnings must be regularly maintained and cleaned in accordance with the City's water conservation policies. Awnings providing shelter for outdoor dining areas shall comply with the following: Frames supporting awnings shall be of noncombustible materials. Awning's cover shall be an approved fire retardant cover for retractable awnings or noncombustible material for fixed awnings. Awnings shall not project over the public property more than 7 feet from the face of the supporting building. In no case shall awnings project more than two-thirds the distance between the building and the nearest curb over the public property. All portions of any awning shall be a minimum of 8 feet above public walkway, including valances. Complete details shall be submitted to Building & Safety for the approval of the support system and attachments to the existing building.

Santa Monica - Lighting Fixtures, if provided, may be permanently affixed onto the exterior front of the primary building. Table lamps using liquid fuel or candles used in a place of public assembly will require an annual Fire Department permit and must comply with Uniform Fire Code design standards. An applicant must obtain an electrical permit for a lighting plan from the City's Building and Safety Division.

Santa Monica - Tables, chairs and umbrellas must be removable.

Santa Monica - A two square foot menu board may be permanently attached to the outdoor dining barrier without Architectural Review Board (ARB) approval. No portable signs, sandwich signs or other non-permanent menu signs may be installed.

Santa Monica - Landscape architecture is encouraged. Water drainage onto the sidewalk is not allowed. Stressed or dying plants must be replaced. Potted plants must have a saucer or other suitable system to retain seepage and be elevated to allow for air flow of at least 2" (two inches) between saucer and sidewalk.

Santa Monica - No trash enclosures or refuse storage is allowed or on the public sidewalk in the outdoor dining area Sidewalk cafes must remain clear of litter at all times.

Long Beach - A continuous, unobstructed path of travel, 5 feet wide minimum, must be provided along the sidewalk as required by ADA. The path of travel need not be in a straight line but should be maneuverable by a person in a wheelchair.

Long Beach - Dining or entertainment areas must be defined by sturdy, portable barriers less than 48 inches in height, as approved by the City Engineer. Railings/barricades should be well-designed, with quality materials, to requirements of the Municipal Code Chapter 21, (Zoning) and Municipal Code Chapter 14.14. All accessories to dining or entertainment must be located inside the barrier.

Long Beach - Outdoor Dining may not be fully enclosed.

Long Beach - Awnings that protect more than six feet into public right-of-way, and/or designed to require ground support are strongly discouraged.

Newport Beach – The outdoor dining area is limited to 25 percent of the interior net public area.

Newport Beach – The outdoor dining shall be designed to minimize impacts to sensitive noise receptors (e.g., hospitals, schools, and residential uses.)

Newport Beach – The outdoor dining shall be designed to eliminate potential impacts related to glare, light, loitering, and noise.

Newport Beach – Outdoor dining on public property shall comply with the standards of the Public Works Department...

Newport Beach – Outdoor dining shall include appropriate barriers separating the outdoor dining areas and parking, pedestrian, and vehicular circulation areas. Pedestrian access shall not be impeded by the barriers. Barriers shall serve only to define the area and shall not constitute a permanent all-weather enclosure.

Newport Beach – Physical elements (furniture, awnings, covers, umbrellas, etc.) shall be compatible with one another and with the overall character and design of the building.

BUILDING STANDARDS

Santa Monica – Exits – Outdoor dining areas shall be designed to maintain clear existing legal exits from the building to the public way. A minimum of 44-inch wide exit path is required to maintain from the building and from enclosed outdoor dining areas. Dining areas with occupancy greater than 50 will require two exits from that area.

Santa Monica - Accessibility - Outdoor dining areas shall be designed to meet accessibility requirements. One wheelchair seating space shall be provided for each 20 seats. A minimum of 36-inch egress aisle width shall be maintained adjoining a wheelchair location. Wheelchair locations shall provide a minimum clear floor area of 33-inch x 48-inch for access or 33-inch x 60-inch for side access.

Santa Monica - Food service aisles shall be not less than 36-inch wide and need not be greater than 42-inch wide.

Santa Monica - Heaters – Heating units shall have a UL or AGA listing. Heating units shall not be installed over or near exits from the building. Units shall maintain the required clearances from combustible materials. A minimum of 6'8" headroom clearance shall be maintained under heating unit.

OPERATIONAL STANDARDS

Santa Monica - Restaurant management is responsible for running and operating the outdoor dining area.

Santa Monica - Outdoor dining patios are for sit-down food and beverage service only; no stand up service is permitted.

Santa Monica - Unruly behavior is not permitted in the outdoor dining area.

Santa Monica - At the end of the business day establishments are required to clean (sweep and mop) the area in and around the outdoor dining area.

Santa Monica - The hours of operation of an outdoor dining area may not exceed the hours of operation of the associated food service establishment.

Santa Monica - All plans and permits for the outdoor dining area approved by the City must be kept on the premises for inspection at all times the establishment is open for business.

Santa Monica - Any modification to the approved plans must be approved by the Planning and Community Development Department, City Planning Division and the Environmental and Public Works Management Department prior to the implementation of any modification.

Santa Monica - All provisions of the Agreements must be complied with at all time.

Santa Barbara – Proof of insurance naming the City as an additional insured acceptable to the City Administrator.

Hermosa Beach - Alcoholic beverages shall not be offered, sold or consumed within the outdoor seating area.

Hermosa Beach - No entertainment, music, speakers, televisions, or audio or visual media of any type, whether amplified or unamplified, shall be provided within the outdoor seating area or situated so as to be clearly visible to the outdoor seating area.

Hermosa Beach - The location and use of the outdoor seating area shall not obstruct the movement of pedestrians, goods or vehicles; required parking spaces; driveways or parking aisles; entrances; legal signs; utilities or other improvements. A minimum four (4) foot wide pedestrian path shall be maintained, unless otherwise required by law. When located adjacent to parking spaces, driveways or parking lot aisles, a physical barrier such as curb or railing shall be provided.

Hermosa Beach - Furnishings shall be strictly limited to chairs, benches and tables, and single pole table umbrellas designed for outdoor use. Extraneous objects, such as

portable shade canopies, podiums, heat lamps, and service objects, are not allowed. All furnishings and barriers shall be maintained free of appendages or conditions that pose a hazard to pedestrians and vehicles.

Hermosa Beach - All furnishings shall be maintained in good condition at all times. The area shall be supplied adequate solid waste management containers and maintained in a neat and clean manner, free of litter and graffiti, at all times.

Hermosa Beach - Any lighting provided for the use shall be extinguished no later than 11:00 p.m. in the C-3 zone and zones that allow C-3 uses, or 7:00a.m. to 10:00 p.m. in the other zones where this use is permitted, and shall be high-efficiency, the minimum intensity necessary, fully shielded (full cutoff) and down cast (emitting no light above the horizontal plane of the fixture), not create glare or spill beyond the property lines, and the lamp bulb shall not be directly visible from within any residential unit.

Hermosa Beach - The use of water for cleaning the area shall conform to Chapter 8.56 Water Conservation and Drought Management Plan, and shall be minimized and any runoff generated shall drain to the sewer system only and shall under no circumstances drain to the stormwater system.

Hermosa Beach - Noise emanating from the property shall be within the limitations prescribed by Chapter 8.24 and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments. The outdoor seating area shall not adversely affect the welfare of the residents or commercial establishments nearby.

Hermosa Beach - The design and use of the outdoor seating area shall conform to all building, fire, zoning, health and safety and other requirements of the Municipal Code and all other requirements of law.

Hermosa Beach - Conditional Use Permit. Any deviation from the standards listed in this subsection shall require a conditional use permit in compliance with Chapter 17.40. (Ord. 14-1345 § 2 January 2014)

Santa Monica - These standards should not be construed as all governmental agency requirements for starting a new business, or for expanding an existing business to provide new services. The business owner must secure the appropriate approvals, licenses and permits from the Alcoholic Beverage Control Board, Planning and Community Development Department, the Finance Department (Business License), Resource Management Department-Economic Development Division ("RMD-EDD") and any other appropriate authority independent of the Outdoor Dining Application process.

Newport Beach – The outdoor dining shall not open earlier than the interior of the eating and drinking establishment and shall close by 11:00 p.m.

San Luis Obispo – Items used within the outdoor dining areas may not be left outdoors over night when not in use.

CHAPTER 14.14 - OCCUPATION OF PUBLIC WALKWAYS

14.14.010 - Definitions.

"Belmont Shore area" means both sides of Second Street from Livingston Drive to Bay Shore Avenue.

"Dining" means the consumption of food or beverage.

"Downtown area" means the area bounded northerly by the centerline of Tenth Street; westerly by the centerline of Maine Avenue north of First Street, and the centerline of Golden Avenue south of First Street and the centerline of Golden Shore and its southerly prolongation; easterly by the centerline of Lime Avenue north of First Street and the centerline of Alamitos Avenue and its southerly prolongation south of First Street; southerly by the mean high tide line of the Pacific Ocean and its prolongation across the entrance to Pacific Terrace Harbor and Queens Way Landing boat basin.

"Existing permit" means a public walkways occupancy permit that has been issued by the City Council.

"Existing permit in good standing" means a public walkways occupancy permit that has been issued by the City Council and is compliant with all laws and regulations, including the terms and conditions attached to that permit. "Existing permit in good standing" does not include a permit the term of which has expired prior to the submission of a completed application for renewal, including all required documentation.

"Minor modification of an existing permit" means a reconfiguration of the area occupied with no change to the total square footage occupied, a change in the use of the area occupied which otherwise complies with all applicable laws and regulations, or a change in the materials or equipment used within the area occupied. "Minor modification of an existing permit" does not include any increase to the total square footage occupied, unless the Director of Public Works deems such change to be negligible.

"Obstruction" means any temporary or permanent structure or stationary object, including, but not limited to, signs, displays, barriers, furniture, plants or plant containers, musical equipment, or merchandise placed on a public walkway.

"Public property" means all City property, including "public walkways", as defined in this Chapter, and public rights-of-way, and the underlayment or foundation thereof, and public improvements thereon, including landscaping on or in such property.

"Public walkways" means all or any portion of territory within the City set apart and designated for the use of the public as a thoroughfare for travel, and including alley, the sidewalks, the center and the side plots thereof.

(ORD-10-0032, § 1, 2010; Ord. C-7796 § 1, 2002; Ord. C-7580 § 1, 1998; Ord. C-6659 § 2 (part), 1989)

14.14.020 - General requirements.

A.

No person shall use or occupy the public walkway with any obstruction for any purpose without first obtaining a written permit from the City Council. Permits are not transferable. This Chapter shall not be applicable to any activity performed pursuant to and permitted by other Chapters of this Code.

- B. Permits may only be issued to owners of property directly adjoining that portion of the public walkway upon which the obstruction is to be located, or to lessees of such property with the consent of the property owner.
- C. The permit may be suspended or canceled at any time at the discretion of the Director of Public Works, in the event that it is determined that the obstruction would interfere with street improvement activities, construction activities, cleaning efforts or other similar activities. The permit may also be suspended at any time, if, in the discretion of the City Engineer or Fire Marshal, the obstruction threatens the public health or safety.
- D. Permits for occupancy may contain restrictions for hours of the day or days of the week during which the obstruction may occupy a public walkway as determined by the City Council, or as determined or modified by the Director of Public Works in his discretion with respect to an existing permit for public walkway occupancy in the Belmont Shore area only.
- E. Permits shall be issued for a period not to exceed one (1) year. Upon expiration, a new permit must be obtained on the basis of a new application. Notwithstanding the above, such permits may be terminated by the City upon thirty (30) days' notice of the City Engineer.
- F. The Director of Public Works is authorized to renew an existing permit in good standing for a one (1) year period provided either: (1) the applicant is not seeking any modification of the existing permit or (2) any modification sought by either the applicant, the City Engineer or the Fire Marshal is deemed by the Director of Public Works to be a "minor modification of an existing permit", as defined in Section 14.14.010.
- G. No permit obtained under this Chapter shall excuse the permittee's obligation to obtain and comply with any other permit or license required by the City or any other regulatory agency.
(ORD-10-0032, § 2, 2010; Ord. C-7796 § 2, 2002; Ord. C-7580 § 2, 1998; Ord. C-6659 § 2 (part), 1989)

14.14.030 - Public walkways occupancy permit—Application.

A person desiring to occupy a public walkway shall file an application for such authorization with the City Engineer. The applications shall be on a form provided by the City and shall be signed by the permittee or his duly authorized agent. Any person signing the application as an agent shall furnish a written authorization executed by the permittee designating the person signing the permit as the permittee's duly authorized agent for such purpose. Such authorization will remain in full force and effect until revoked by a written document signed by the permittee and filed with the City Engineer. Such application shall be accompanied by plans satisfactory to the City Engineer, which show in detail the proposed obstruction.

(Ord. C-6659 § 2 (part), 1989)

14.14.035 - Fees, refunds and security deposits.

- A. Every applicant for a public walkway occupancy permit under this Chapter shall pay to the City, before a permit is issued, an annual fee as adopted by the City Council by resolution and specified in the fee schedule on file in the office of the City Engineer.
- B.

Every applicant for a public walkway occupancy permit under this Chapter shall pay to the City a security deposit in an amount equivalent to one (1) year's fee or in such additional amount as determined by the City Council. Such security deposit shall be applied to the cost of repairing any damage to public property attributable to the permittee's use of public property. Any balance shall be "rolled over" to apply toward the following year's security deposit until the permit is terminated or canceled, at which time the security deposit shall be applied to the cost of restoring the public property to its prior condition and the remainder, if any, refunded to the permittee.

- C. In the event that any permit issued pursuant to this Chapter is canceled because the permittee has violated a condition of his or her permit or any regulation or law, or because the permittee no longer owns or controls the property directly abutting the portion of the public walkway upon which the obstruction is located, no portion of a permit fee paid by him or her shall be refunded. If the permit is canceled by the City for any other reason, the unearned portion of the permit fee shall be refunded.

(Ord. C-7580 § 5, 1998; Ord. C-6659 § 2 (part), 1989)

14.14.040 - Public walkway occupancy standards.

Any public walkway occupancy subject to the terms of this Chapter shall conform to all of the following requirements:

- A. The minimum width of the public walkway shall be not less than ten feet (10'), and such obstructions must permit at least five feet (5') of unobstructed area of public walkway, unless otherwise approved by the City Council on the basis of the considerations specified in this Chapter;
- B. The obstruction shall not be located in a manner which interferes with the flow of pedestrian or other traffic, or which creates a potential threat to public safety, as determined by the City Engineer or Fire Marshal;
- C. The maximum height of any such obstruction shall be six feet (6') unless otherwise approved by the City Council on the basis of considerations specified in this Chapter and all such obstructions shall be entirely portable except as specifically permitted by the City Engineer under Section 14.14.045;
- D. The obstruction shall be kept in a good state of repair and in a safe, sanitary and attractive condition;
- E. The obstruction may not be located within the forty-five (45) degree line of sight triangle adjacent to street, alley or driveways unless otherwise approved by the City Council on the basis of considerations specified in this Chapter, but in no case extending beyond that portion of the permittee's property which abuts the public right-of-way;
- F. Such obstruction shall be located in a manner which will not interfere with visibility, vehicular or pedestrian mobility or access to City or public utility facilities and will not compromise the safe use of any public walkway or other right-of-way. Permitted locations shall be determined by the City Council after consideration of the above and other relevant factors in relation to the proposed site. The City Council may, in its discretion, place additional conditions upon the issuance of such permit in order to ensure the protection of the public health and welfare and public property.
- G. Minor modifications to these standards may be made by the Director of Public Works to an existing permit in good standing.

(Ord. C-7796 § 3, 2002; Ord. C-7580 § 3, 1998; Ord. C-7066 § 1, 1992; Ord. C-6659 § 2 (part), 1989)

14.14.045 - Public walkways dining permits and entertainment permits.

- A. No person may occupy or cause to be occupied any portion of the public walkway for the purpose of providing dining or entertainment except as permitted by this Chapter or as elsewhere provided for in this Code.
- B. Permits to occupy a portion of the public walkway for the purposes of dining or entertainment may contain restrictions for hours of the day or days of the week during which dining or entertainment may occur on the public walkway as determined by the City Council, or as determined or modified by the Director of Public Works in his discretion with respect to an existing permit in good standing for public walkway occupancy in the Belmont Shore area only.
- C. In addition to the other requirements set forth in this Chapter, permits to occupy a portion of the public walkway for the purpose of dining or entertainment shall conform to all of the following standards:
 - 1. All dining or entertainment areas shall be defined by placement of sturdy barriers, not to exceed forty-eight inches (48") in height, as approved by the City Engineer. Except as approved by the City Engineer and the Fire Marshal, such barriers shall be portable. Such barriers may only be affixed to public property with the prior approval or direction of the City Engineer;
 - 2. All accessories to dining or entertainment uses such as plants or planter boxes, umbrellas, podiums, menu boards, musical equipment and heaters must be located inside the barrier.
- D. All dining and entertainment which takes place on the public right-of-way shall conform to the requirements of Chapter 8.80 of this Code regarding noise. Complaints regarding noise shall be logged by City staff and may be the basis for suspension, cancellation, or nonrenewal of a permit.
- E. The permittee shall be responsible for cleaning the public walkway occupied by a dining or entertainment area.

(ORD-10-0032, § 3, 2010; Ord. C-7796 § 4, 2002; Ord. C-7580 § 6, 1998)

14.14.050 - Public walkway occupancy permits—Downtown area.

In addition to the other requirements set forth in this Chapter, the following standards for public walkway occupancy and for public walkway dining and entertainment areas apply in the downtown area:

- A. Canopy structures, including overhead structures and windbreaks, are permitted, provided such structures are approved as part of a public walkway occupancy permit and are consistent with limitations imposed by the Redevelopment Agency as part of an approved master plan or design guidelines. Such structures must comply with all applicable laws and regulations, including, but not limited to, all fire, health, and building code regulations, and shall be a medium-toned beige or shall match the color of the adjacent building. Signage on or adjacent to a canopy structure shall be limited to business identification signs and shall be included in the calculation of total signage permitted pursuant to Chapter 21.44 of this Code.
- B. Unless otherwise approved by the City Engineer, barriers must be affixed to the sidewalk. The manner of affixing such barriers is subject to the prior approval of the City Engineer.
- C. Temporary banners, not exceeding the height of the barrier and attached to the barrier are permitted for a two (2) week period no more than four (4) times per year.
- D.

Menu boards must be portable, located within the dining area, and must not exceed five feet (5'), six inches (6") tall. Menu boards may be either a single pole pedestal of painted metal or a board attached to the inside of the barrier, parallel to the barrier.

- E. A-frame signs, television monitors, and canopies are not permitted at any location on the public walkway.

(ORD-06-0009 § 1, 2006; Ord. C-7725 § 1, 2001; Ord. C-7580 § 4, 1998)

14.14.055 - Entertainment on the public right-of-way.

- A. No person shall perform or cause to be performed any entertainment activity on the public right-of-way without first obtaining a public walkways occupancy permit which permits such entertainment.
- B. In the downtown area, nonamplified outdoor entertainment is permitted from ten o'clock (10:00) a.m. until twelve o'clock (12:00) midnight each day. Amplified outdoor entertainment is permitted from five o'clock (5:00) p.m. to twelve o'clock (12:00) midnight Monday through Friday, except if such day is a holiday. Amplified outdoor entertainment is permitted from ten o'clock (10:00) a.m. to twelve o'clock (12:00) midnight on Saturday, Sunday and holidays.
- C. This Section shall not apply to any holder of a permit issued pursuant to Chapter 5.60 or Section 14.04.070 of this Code. Nothing in this Section shall operate to modify any requirement of Chapter 3.80 or 5.72 of this Code.

(Ord. C-7626 § 1, 1999)

14.14.060 - Public walkways occupancy permit—Failure to obtain.

- A. Any person who occupies any public sidewalk with any "obstruction," as defined herein, prior to obtaining a permit therefor, shall pay a fee double the fee calculated by the method prescribed in this Chapter.
- B. The payment of the additional fee shall not relieve such person from the obligations imposed by this Chapter, or from penalties prescribed herein.

(Ord. C-6659 § 2 (part), 1989)

14.14.070 - Indemnification of City.

A permit issued for public walkway occupancy under this Chapter shall provide that the permittee shall defend, indemnify, save and keep the City, its officers, agents and employees free and harmless from and against any and all claims for injury, damage, loss, liability, cost and expense of any name or nature whatsoever which the City, its officers, agents and employees may suffer, sustain, incur, or pay out as a result of any and all actions, suits, proceedings, claims and demands which may be brought, made or filed against the City, its officers, agents and employees, by reason of or arising out of, or in any manner connected with, any and all operations authorized or permitted by the permit.

(Ord. C-6659 § 2 (part), 1989)

14.14.080 - Insurance.

- A. Concurrent with the issuance of the permit, the permittee shall procure and maintain, at its cost, during the term of the permit insurance as prescribed in regulations issued by the City Manager pursuant to Section 2.84.040.
- B. Insurance required herein shall not be deemed to limit the permittee's liability under this permit.
- C.

Permittee shall keep the insurance in full force and effect during the term of any public walkway occupancy permit issued pursuant to this Chapter. No permit granted pursuant to this Chapter shall be effective until the permittee has complied with all insurance requirements.

- D. Any public walkway occupancy permit so terminated may be reinstated only upon application therefor submitted and approved by the City and upon the payment of twenty dollars (\$20.00) per day for every day on which no insurance was provided and also upon payment of all sums due and unpaid to the City under the provisions of this Chapter, as well as full indemnification during the uninsured period.

(Ord. C-7934 § 18, 2004; Ord. C-7066 § 2, 1992; Ord. C-6659 § 2 (part), 1989)

14.14.090 - Default.

Upon the termination of the public walkway occupancy permit by reason of the failure of the permittee to comply with the provisions of this Chapter, the City may notify the permittee in writing of the default and specify the time within which the default is to be remedied. If the permittee fails or refuses to remedy the default within the period of time specified, the right of permittee to use the public walkway shall cease and the City shall have the right to remove the public walkway obstruction as provided under this Chapter. The permittee shall reimburse the City for any expense incurred by the City in removing the obstruction. Should the permittee continue to use the public walkway after the permit has been terminated and should the City file suit to restrain the use of the public walkway by permittee, the permittee shall reimburse the City for its reasonable costs and expenses in connection therewith, including a reasonable Attorney fee.

(Ord. C-6659 § 2 (part), 1989)

14.14.100 - Revocation and nonrenewal.

- A. The City Council may revoke, refuse to issue or renew a public walkway occupancy permit if such person has failed or refused:
1. To pay any fees for permits, security deposits or charges as established by the City Council;
 2. To repair public improvements damaged as a result of the occupancy of the public walkway;
 3. To comply with the terms of this Chapter or of a permit granted hereunder.
- B. The City Council may also refuse to issue or renew a permit for public walkway occupancy in an area where such occupancy will be inconsistent with the public's use of the public walkway, access needs or the use of any property located adjacent to the public walkway.

(Ord. C-7580 § 7, 1998; Ord. C-6659 § 2 (part), 1989)

14.14.110 - Appeal—City Council.

Except for minor modifications to an existing permit, any other determination or modification to an existing permit made by the Director of Public Works may be appealed to the City Council within ten (10) calendar days from the date of such determination or modification in the manner provided in this Section.

- A. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Director of Public Works.
- B.

If the appeal is made by a permittee involving such permittee's existing permit, such appeal shall be accompanied by an appeal deposit in an amount determined by the City Council by resolution. For appeals made by any person other than the permittee, there shall be no required appeal deposit.

- C. The City Council shall conduct a hearing on the appeal or refer the matter to a Hearing Officer, pursuant to Chapter 2.93 of this Code, within sixty (60) business days from the date the completed request for appeal was received by the Director of Public Works, except where good cause exists to extend this period. The appellant shall be given at least ten (10) business days written notice of such hearing. The hearing and rules of evidence shall be conducted pursuant to Chapter 2.93 of this Code. The determination of the City Council on the appeal shall be final.

(ORD-10-0032, § 4, 2010)



Outdoor Dining & Seating Information and Guidelines



City of Murrieta, Planning Department

1 Town Square

Murrieta, CA 92562

(951) 461-6061

www.Murrieta.org - City Website

Hours of Operation

Monday – Thursday 7:30a.m. – 5:30p.m.

Closed on Fridays



OUTDOOR DINING & SEATING INFORMATION and GUIDELINES

February 4, 2008

PURPOSE

These guidelines provide standards for the location and appearance of outdoor dining and/or seating areas in the City of Murrieta. The intent of the guidelines is to maintain a quality and consistent appearance of outdoor seating areas in keeping with existing Development Code standards. These guidelines are intended to save time and expense by pre-establishing standards that must be followed for all outdoor dining set-ups.

The City encourages the use of outdoor dining and seating areas, provided that business operators are mindful of two important considerations: (1) the safety and flow of pedestrian traffic; and (2) the visual appearance of the outdoor dining and/or seating areas. These design guidelines are also intended to ensure that outdoor dining / seating is done in a way that is both safe for pedestrians and appropriate for the surroundings.

APPLICATION PROCESS

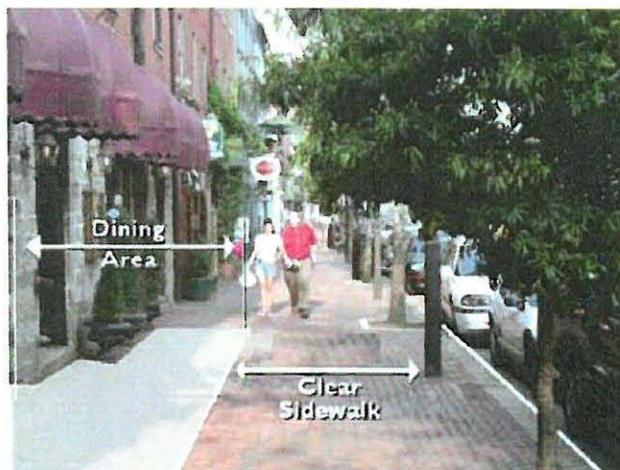
Outdoor seating may be allowed on private property as an accessory use associated with a legally approved eating and/or drinking business. If an application for outdoor seating is for eight (8) or fewer seats, and the proposal complies with these guidelines and regulations, it is generally allowed with administrative (staff) review and approval. Larger outdoor areas (more than 8 seats) which may significantly intensify the restaurant use, change the exterior of the building, or otherwise not comply with these guidelines, may be referred to the Planning Commission as a Conditional Use Permit (CUP).

OUTDOOR DINING & SEATING PLAN SUBMITTAL REQUIREMENTS

- Floor Plan:** A plan showing the layout of the indoor business space, the proposed outdoor dining/seating area with appropriate setbacks indicated. Must identify center name, business name and street address.
- Site Plan & Vicinity Map:** A drawing showing the location of the restaurant/business within the entire shopping center. The center name and surrounding streets should be noted.
- Application Form & Processing Fee:** For dining areas requiring CUP approval, please refer to the Conditional Use Permit Submittal Requirements handout for additional items.
- Hold Harmless Agreement:** Only for dining / seating areas immediately adjacent to the public right-of-way. In these cases, a Hold Harmless Agreement shall be recorded releasing the City from any liability related to the outdoor dining/seating area.
- CUP Submittal Requirements:** For dining areas requiring CUP approval, please refer to the Conditional Use Permit Submittal Requirements handout for additional items.

SETBACKS FOR OUTDOOR DINING / SEATING AREAS

- Handicapped Accessibility Requirements: If any of the standards listed below are found to be inconsistent with the American's with Disabilities Act (ADA) or California Building Code (CBC) requirements, the ADA and/or CBC standards shall apply.
- From Property Lines or Parking Lots: A minimum unobstructed setback of three (3) feet from property lines or parking lots, including cars overhanging the curb.
- Residential Uses: A minimum setback of two hundred (200) feet from residential uses (except approved mixed-use projects).
- From Other Businesses: The minimum setback necessary to maintain the visibility of neighboring businesses to pedestrians and motorists.
- Pedestrian Space: A minimum of three (3) feet of totally unobstructed walkway space shall be maintained around the outdoor seating area, and outdoor seating areas shall not disrupt disabled access.
- Perimeter Enclosure. Adequate space to ensure handicapped accessibility and to permit the movement of patrons and wait staff within the enclosure.
- Potential Impacts: Outdoor seating should consider the location of sensitive land uses and proper measures.



DINING BARRIERS

Barriers are recommended, but are not required unless you plan to serve alcohol in the outdoor dining/seating area, or if the seating area is directly abutting public property.

Serving Alcohol: All areas where alcoholic beverages are served outside must comply with the standards established by the State Department of Alcoholic Beverage Control.

- Any perimeter fence and/or landscaped planter(s) shall be designed to clearly suggest that alcohol is not allowed outside the dining/seating area.

Abutting Public Property: Outdoor seating is prohibited on public property.

- For seating areas directly abutting public property, a physical separation in the form of an approved fence and/or landscaped planter is required.
- The fence/planter must be a minimum height of thirty-six (36) inches, but no higher than forty- eight (48) inches maximum.

Design & Appearance: The physical design of the fence, barrier and/or landscaped planter(s) shall be compatible with the design of the building.

- Dining/seating area barriers (fences, gates, ropes, etc.) shall be visually appealing, and help to separate the dining/seating area from the sidewalk.

- All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

A variety of styles and designs are permissible for outdoor dining/seating area barriers, including the following:

Sectional Fencing: This is a desirable solution for outdoor seating areas using barriers, and is generally defined as rigid fence segments that can be placed together to create a unified fencing appearance. This type of fencing is portable, but cannot be easily shifted by patrons or pedestrians, as can less rigid forms of enclosures.

- Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be of a dark color (either painted or stained).
- Any barrier must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure.



Rope and Chain Rails: Rope or chain-type barriers are generally defined as enclosures composed of a rope or chain suspended by vertical elements such as stanchions. These types of barriers are permitted if they meet the following guidelines:

- The rope or chain must have a minimum diameter of 1 inch, in order to remain detectable by the visually impaired.



- Vertical support posts (stanchions, bollards, etc) must be constructed of wood or metal (aluminum, steel, iron, or similar).
- A stanchion or other vertical supporting member that has a base must not be a tripping hazard.
- The stanchion base shall not be domed, and shall not be more than one-half (1/2) of an inch above the sidewalk surface.

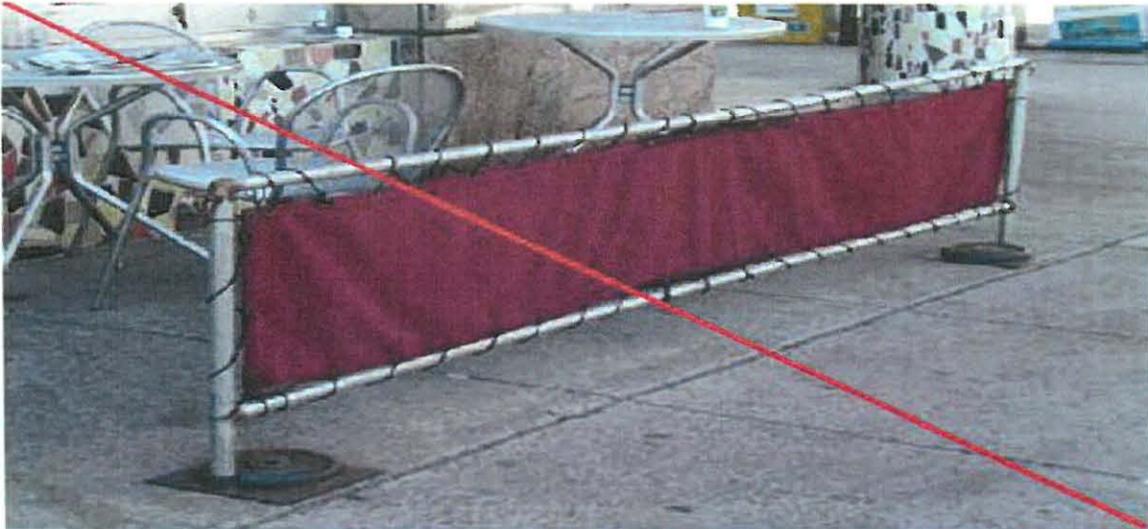
Planters: Planters may be used in addition to or in place of other barrier designs. Planters may be used in situations where no barrier is required in order to provide added visual interest and create a more attractive and welcoming atmosphere.

- All planters must have living plants contained within them.
- Dead plants within the planter must be replaced or the planter removed from public view.
- Artificial plants; empty planters; or planters with only bare dirt, mulch, straw, woodchips or similar material are not permitted.
- Seasonal, thematic planter displays are encouraged.



Prohibited Materials: Fabric inserts (natural or synthetic) of any size are not permitted to be used as part of a barrier.

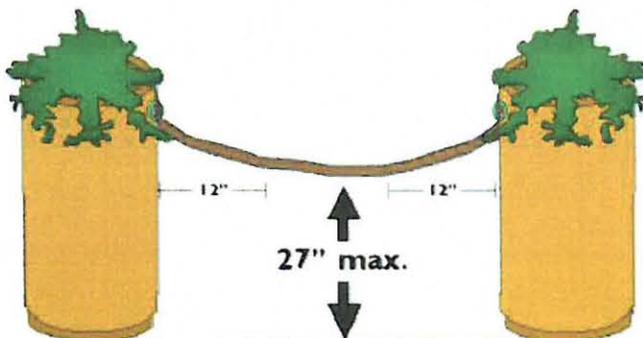
- The use of chain-link, cyclone fencing, chicken wire or similar material is prohibited.
- Materials not specifically manufactured for fencing or pedestrian control are prohibited unless they are expressly allowed elsewhere in these guidelines.
- Materials such as buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc. are not permitted and shall not be used as components of a barrier.



BARRIER MEASUREMENTS

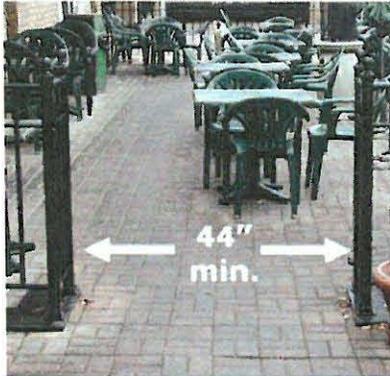
To ensure their effectiveness as pedestrian control devices and their ability to be detected by persons with vision impairments, barriers must meet the following measurements:

- Height: The highest point of a barrier (such as a stanchion) must measure at least 36 inches in height, with the exception of planters.
- Maximum Height of Planters and Plants: Planters may not exceed a height of 36 inches above the level of the sidewalk. Plants (whether live or artificial) may not exceed a height of 108 inches (8 feet) above the level of the sidewalk.
- Rope/Chain Distance from Ground: In the case of a rope or chain enclosure, the rope or chain must not exceed 27 inches in height.
- Maximum Distance from Ground: All barriers must be detectable to visually impaired pedestrians who employ a cane for guidance. Therefore, the bottom of barriers must be no greater than 27 inches above the sidewalk surface.



- “Open Appearance”: Fences or other perimeter enclosures with a height of between 36 inches and 48 inches must be at least 50 percent open (see-through) in order to maintain visibility of street level activity. Any enclosure with a height over 48 inches must be at least 80 percent open (see-through).

- **Minimum Access Width:** Any access opening within the barrier must measure no less than 44 inches in width.
- **Location:** Access openings should be placed in a location that will not create confusion for visually impaired pedestrians.



FURNITURE AND FIXTURES

Outdoor dining furniture becomes a prominent part of the streetscape when used in the front of buildings, and such furniture needs to uphold the high standards applied to buildings and other improvements. To ensure compatibility with surrounding uses and a high standard of design quality, all physical elements associated with an outdoor seating area shall be compatible with the overall design of the main structure. A wide range of furniture styles, colors and materials are permitted.

- All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.
- All furniture and fixtures must be maintained in a clean condition at all times.
- All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds.
- Furniture and fixtures must not be secured to trees, lampposts, street signs, hydrants, or any other public street infrastructure by any means, whether during restaurant operating hours or when the restaurant is closed.



To ensure a quality visual appearance, the conditions on the following pages apply to outdoor dining furniture.

Tables and Chairs: Tables and chairs need to be functional, not only for patrons, but also for pedestrians, given the limited space available in some areas. Outdoor dining furniture must also contribute to the overall atmosphere and be complementary in both appearance and quality.

- Tables may be a dark or earth tone color, or a natural unpainted material (i.e. wood, metal, etc.).
- Tables shall not be white plastic or any fluorescent or other strikingly bright or vivid color.
- Upholstered chairs are permitted. Upholstery is not permitted to be of any fluorescent or other strikingly bright or vivid color.
- All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.



Umbrellas: Umbrellas can add a welcoming feel to outdoor dining areas and provide shelter from the elements, making their use desirable for outdoor dining / seating applications. Appropriately designed and sized umbrellas are permitted subject to the following conditions:

- Umbrellas must be free of advertisements or product names.
- All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.
- When extended, the umbrella must measure at least 7 feet above the surface of the outdoor dining area in order to provide adequate circulation space below.
- The 7 foot minimum height includes not only the umbrella frame and panels, but also any decorative borders such as fringes, tassels or other such ornamentation.
- No part of an umbrella may exceed a height of 10 feet above the surface of the outdoor dining area to avoid an undue visual obstruction of other businesses.
- Umbrellas must blend appropriately with the surrounding built environment.
- Umbrella fabric must be one solid color, and is not permitted to be a fluorescent or other strikingly bright or vivid color.
- Given the constrained space of many outdoor dining areas, it is strongly recommended that square or rectangular umbrellas be used, as opposed to round or octagonal umbrellas.
- Market-style umbrellas (those designed specifically for patio or outdoor restaurant use) are preferred for outdoor dining purposes.
- Umbrella fabric must be of a material suitable for outdoor use, and must be canvas-type.

- No plastic fabrics, plastic/vinyl-laminated fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor seating area.
- Umbrellas must not contain signage for the restaurant or for any other entity in the form of wording, logos, drawings, pictorial or photographic representations, or any other similar identifying characteristics.



Prohibited Furniture

All furniture other than tables, chairs, umbrellas and heaters are prohibited. This includes, but is not limited to, serving stations, bar counters, shelves, racks, sofas, televisions, cooking appliances and torches.

Prohibited Sidewalk Coverings

The floor of outdoor seating areas should be uncovered sidewalk material as to provide continuity with the adjacent public sidewalk or private walkway.

- Prohibited seating area floor coverings include carpet, fabric, canvas, wool, tile, linoleum, nylon, vinyl or any covering intended to resemble turf.
- Raised decks, platforms, or other such surfaces are not permitted within outdoor dining areas.

Signage - Signage is not permitted within an outside dining area except with a valid City permit. No extra or additional signage is permitted solely as a result of having an outdoor dining area.

Waste Receptacles - Waste receptacles shall be provided in outside seating areas for "quick serve" establishments (typically using disposable utensils) and/or when table service is not provided. Waste receptacles shall not be placed in outside seating areas when table service is provided unless required by the Planning Director.

Entertainment - Outdoor seating areas that include dancing, entertainment, or amplified music require the preparation of a noise analysis with the appropriate mitigation measures. Outdoor entertainment requires a separate application from the City.

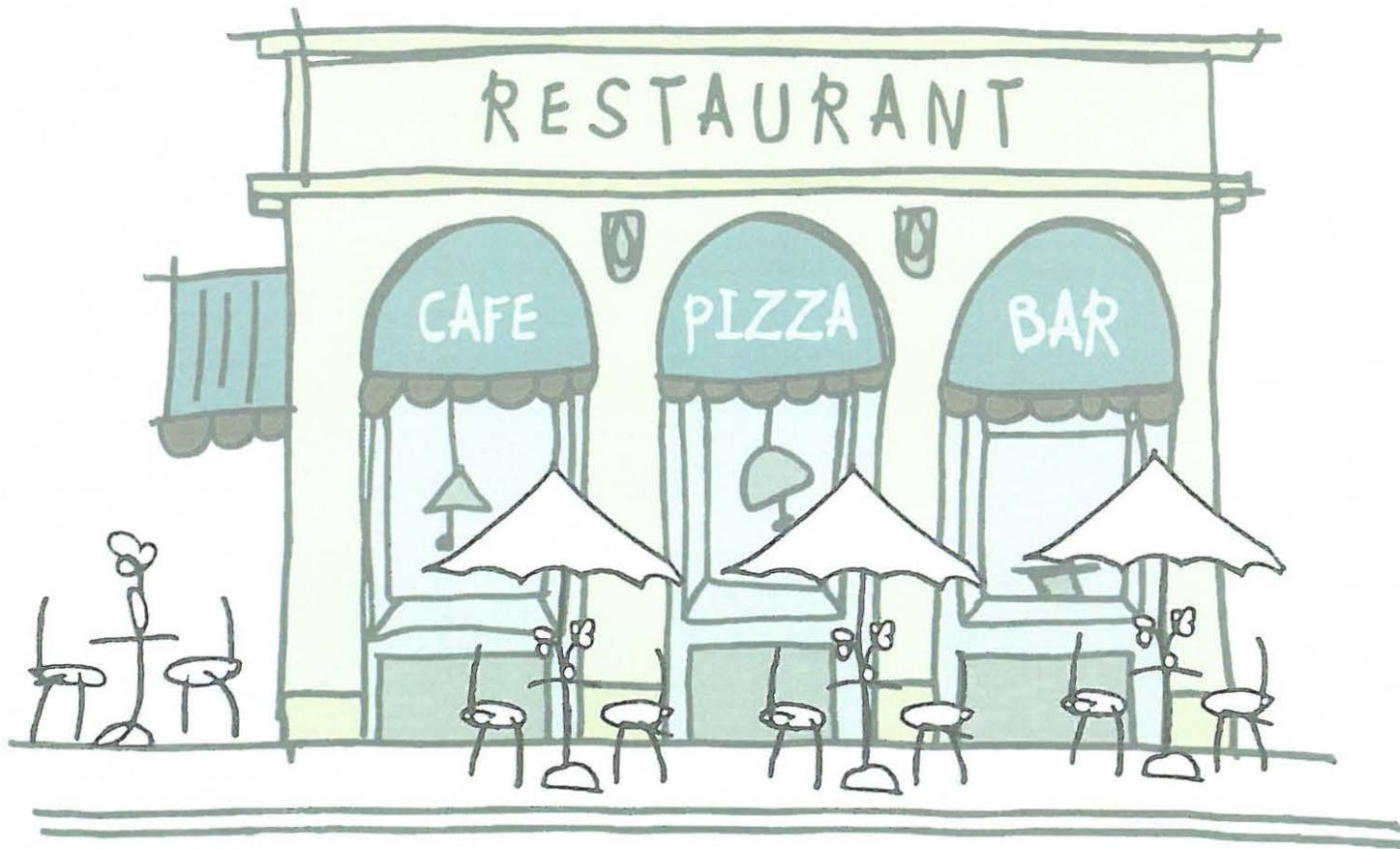
Parking Requirements - Outdoor seating areas with eight (8) or fewer seats will not be required to provide additional off-street parking. Outdoor seating areas with more than eight (8) seats shall comply with the requirements for off-street parking in Chapter 16.34 of the Development Code.

- The Planning Director may adjust the parking requirements for outdoor seating areas with 20 or fewer seats when the seating is operated on a seasonal basis.
- Outdoor seating areas that are used in common with several restaurants or tenants within a commercial center shall not be required to provide additional off-street parking for these common outdoor areas if the total number of seats does not exceed eight (8) seats per restaurant or 20 seats total.

SALT LAKE CITY
OUTDOOR DESIGN GUIDELINES & PARKLET PILOT PROGRAM

OUTDOOR DINING DESIGN GUIDELINES

SUMMER 2013



PURPOSE

The intent of the design guidelines for outdoor dining is to ensure quality outdoor seating area, the appropriate use of the public sidewalk for outdoor dining and safety for pedestrians in Salt Lake City.

APPLICATION MATERIAL

Applicant must submit the following:

Written letter. A brief description that includes the name of the restaurant, a description of proposed outdoor dining space and number of seats.

Site Plan. A plan showing the proposed outdoor dining space, to scale, including the sidewalk clearance requirement, elevations, furniture.

Photos or Drawings. Submit color photos, renderings or graphics showing the set up, type of furniture and materials of barriers.

PROCESS

The demarcation of outdoor dining space must meet these design guidelines and is permitted through an administrative approval process led by the Planning Division, the Transportation Division, the Engineering Division and the Property Management Division.

STEPS FOR APPROVAL

- 1) Schedule a DRT meeting at (801) 535-6629 or at 451 S State St Room 215.
- 2) Contact the Engineering Division for permit application at (801) 535-6396 or at 349 South 200 East, Suite 100.
- 3) Contact the Property Management Division to obtain lease agreement at (801) 535-7133 or at 451 S State St Room 406.

BARRIERS

DESIGN OF BARRIERS

Barriers are meant to demarcate the section provided for tables, chairs and umbrellas, for both temporary and permanent use. Barriers may include but not limited to removable fences, freestanding fences, hedges, planters, trees, removable columns, and other. See figures 1-3 for acceptable barrier styles.



Figure 1. Acceptable metal barrier.

Les Madeleines at 216 East 500 South.



Figure 2. Wood and metal planters as a barrier.



Figure 3. Freestanding glass & metal fence.

PROHIBITED BARRIERS

No fabric inserts, chain link fencing, chicken wire or cyclone fencing. No fabric or advertising on canvas allowed on barriers. See figure 4 unacceptable barrier style.



Figure 4. No fabric, canvas inserts or chicken wire.

BARRIERS

HEIGHT OF BARRIERS

The height of any barrier may not exceed 36 inches. The bottom of the rope/chain barrier must not exceed 27 inches above the sidewalk surface.



Figure 4. Max height of barriers is 36 inches.

PLANTERS

In the case of planters, the planter itself shall not exceed 36 inches; the plant (live or artificial) height shall not exceed 6 feet measured from the ground. See figure 4 & 5.



Figure 5. Max planter and plant height is 6 feet.

ENCLOSED OUTDOOR DINING

The City reserves the right to review final design for requests that include vertical elements, awnings, canopies and removable side walls covering the outdoor dining space.

BARRIERS

ESTABLISHMENTS THAT SERVE ALCOHOLIC BEVERAGES

The Utah Department of Alcoholic Beverage Control requires that the outdoor dining space be "well defined, properly secured, and delineated by some type of physical structure". In order to comply with State requirements, outdoor dining area barriers for these establishments shall:

- a. Clearly define the designated area with sturdy barrier such as freestanding sectional fencing, rope or chain.
- b. Have one clear entrance to the outdoor dining area and it must be located directly in front of the egress doors. See figure 6.

ESTABLISHMENTS THAT DO NOT SERVE ALCOHOLIC BEVERAGES

These establishments are exempt from providing specific demarcation of outdoor dining space.



ZY Food Wine & Cheese at 268 South State St.

Figure 6. Clearly defined outdoor dining entrance.



ZY Food Wine & Cheese at 268 South State St.

SIDEWALK

MINIMUM WIDTH OF SIDEWALK CLEARANCE

Depending on the area of the city where the outdoor dining space is proposed, there are three minimum sidewalk clearances for continuous pedestrian access along the public sidewalk that must be provided. See the following figures for minimum requirements. Measured from the restaurant façade to the start of outdoor dining barrier (See figure 7) or from the edge of the parallel barrier to the curb (See figure 8).

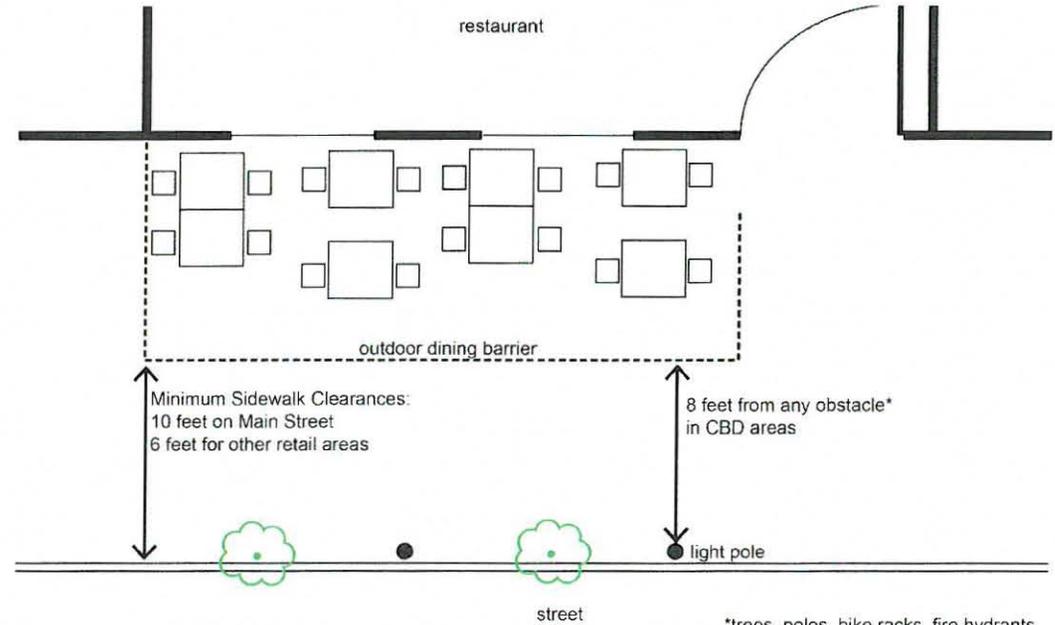


Figure 7. Outdoor Dining adjacent to restaurant.

*trees, poles, bike racks, fire hydrants

SIGHT DISTANCE TRIANGLE

Outdoor dining space located on corner lots shall not obstruct the sight distance triangle.

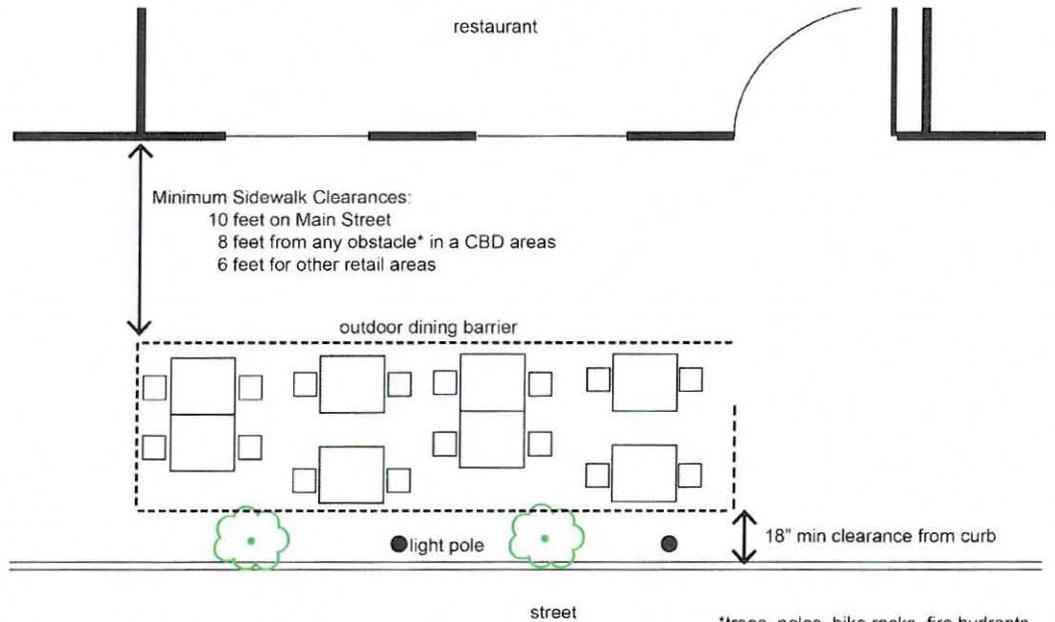


Figure 8. Outdoor Dining adjacent to street.

*trees, poles, bike racks, fire hydrants

FURNITURE

UMBRELLAS

Umbrellas must be free of advertisements and contained within the outdoor dining area. Advertisements are allowed only if it is to advertise the name of the restaurant. No fluorescent or strikingly bright or vivid colors. Market style umbrellas, designed specifically for patio or outdoor restaurant use are preferred. Umbrellas are to maintain a minimum height clearance of 8 feet. See figures 9 & 10.



Jimmy Johns at 14 East 300 South.

Figure 9. Acceptable logo on umbrella.



Figure 10. Unacceptable logo on umbrella.

MATERIAL

All furniture material should be preferably of durable materials such as wood or metal. See figure 11.



Les Madeleines at 216 East 500 South.

Figure 11. Furniture must be of durable material, wood or metal.

STORAGE

MAINTENANCE AND STORAGE

Business owner or outdoor dining operator shall maintain the outdoor dining space clean. Outdoor dining furniture or appliances are not allowed to be stored in the public right-of-way.

PARKING

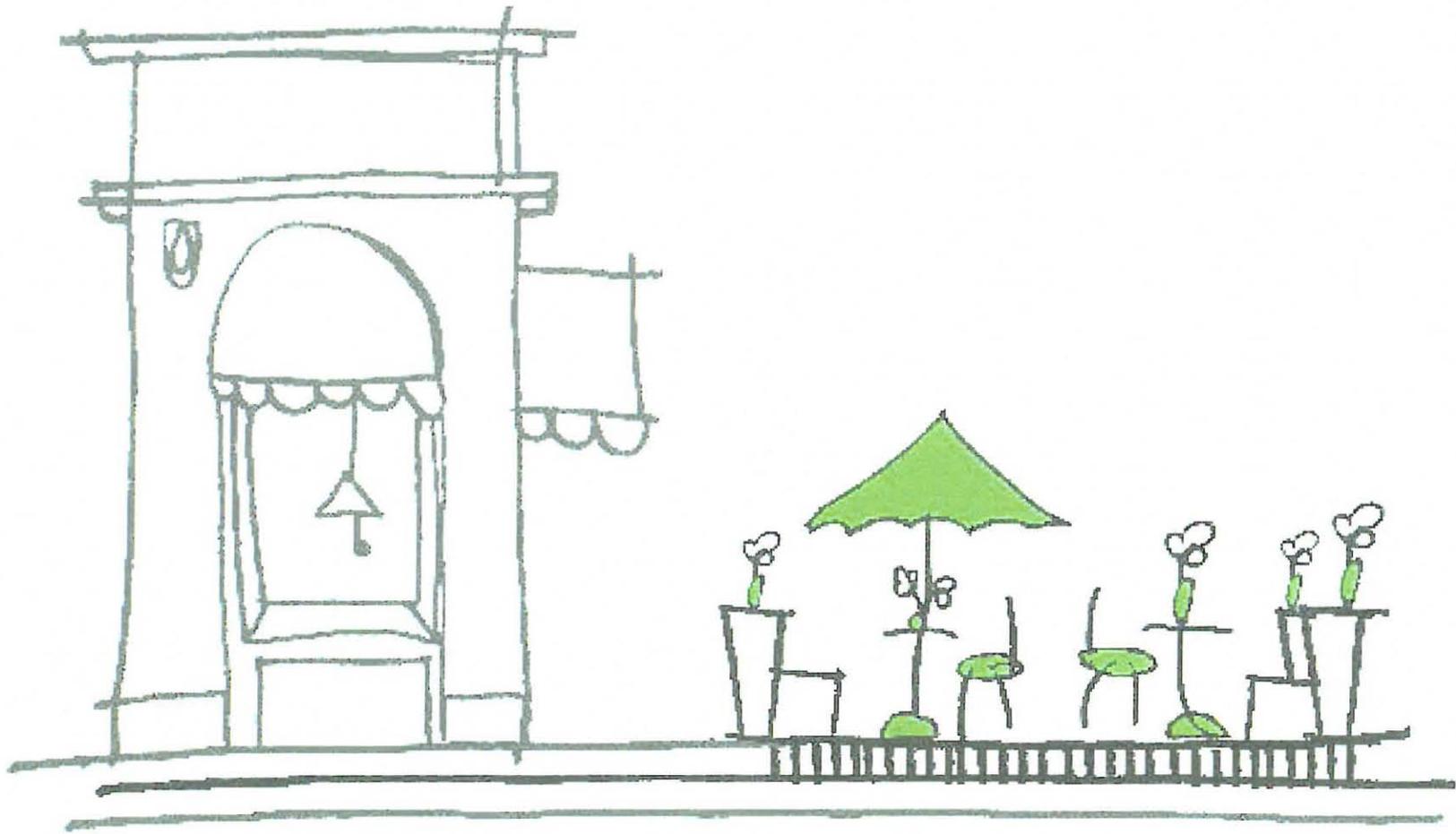
REQUIREMENTS

Parking requirements for outdoor dining addition are indicated in Section 21A.40.065F of the Salt Lake City Zoning Ordinance.

SALT LAKE CITY
OUTDOOR DESIGN GUIDELINES & PARKLET PILOT PROGRAM

PARKLET PILOT PROGRAM DESIGN GUIDELINES

SUMMER 2013



PARKLET

A parklet is a small urban park, often created by replacing several under-utilized parking spots with a patio, planters, trees, benches, café tables with chairs, fountain(s), artwork, sculptures and/or bicycle parking. See figure 1.



Figure 1. A parklet in the San Francisco area.

PURPOSE

The purpose of the parklet design guidelines is to create efficient uses of urban space, provide attractive additions to local streetscapes, invite people to sit and stay in public spaces, enhance walkability, and encourage business participation in a vibrant streetscape. Parklets are to be used as public space and are marked as such to promote use.

Because the process for establishing parklets is still preliminary, these guidelines are subject to change at the discretion of the Salt Lake City Community and Economic Development Department. Parklet sponsors are responsible for conducting outreach, designing, funding, and constructing their parklets. They also assume liability for the parklet and ensure the parklet is well-maintained and kept in good repair.

DESIGN

Parklets normally occupy two parking spaces and extend 6 feet into the parking strip for parallel parking and 15 feet for diagonal parking. Parklets must have a visible barrier with the road, wheel-stops at each end, soft stop posts for directing traffic, public seating areas, curb drainage, be flush with the curb, provide vertical elements such as a canopy or umbrellas, and provide access to persons in wheelchairs.

COSTS

Parklet installations normally cost between \$5,000 and \$20,000, depending on size, design and materials. If paid spaces are used, businesses would pay a one-time seasonal fee to bag meters. Other engineering and building permits are required for each parklet location. Parklet hosts are responsible for all construction, maintenance, permitting, and parking-related costs.

EXISTING PROGRAMS

Cities from San Francisco to Philadelphia have adopted similar programs in which they coordinate with businesses to issue permits for these installations. In surveys conducted in San Francisco, residents specifically named parklets as a desirable factor in improving their neighborhoods.

IMPACTS ON REVENUE

The cost of installing and maintaining a parklet has proven to be worthwhile for businesses. The Green Line Café in Philadelphia saw a 20% increase in revenue and the Mojo Café in San Francisco experienced a 30% increase. This is closely tied to increased foot and bicycle traffic. A study by the Great Streets Project showed that the best parklets increased foot traffic by 37% and increased the number of people stopping and sitting down by 30%.

PERMITTING

All parklet sponsors are required to have a permit. Parklet sponsors must obtain a permit from the Salt Lake City Transportation Division following review by the Transportation Division, Planning Division, Engineering Division, Public Utilities, and Property Management before undertaking any on-site installation.

-An initial site plan must be submitted with the application, and final construction documents must be submitted before receiving a permit. Construction documents should show parklet location and context, a detailed site plan, elevations from all sides, sections or cut-through drawings of the design, and construction details for assembly. Renderings and perspectives are optional.

the Engineering Division, Public Utilities, and the Planning Division will review all paperwork. Modifications and clarifications to your documents may be required. A Lease Agreement will then be arranged through Salt Lake City Property Management.

-Following approval of your design, an invoice will be issued for the final permit. The permit fee is a one-time charge to cover the cost to the city of processing your permit application and removal of parking spaces and meters.

-Permit fees depend on the processing and review required for your application, how many parking spaces your parklet will occupy, and whether your parklet is sited on a street with metered parking.

-A pre-installation on-site inspection must be scheduled at least 10 days before installation to authorize beginning construction.

-On-site construction and installation should be completed within 30 days.

-A post-installation on-site inspection must be scheduled within five days of the end of parklet construction, to verify that the parklet was built to the features, dimensions, and materials specified in the construction documents.

-Parklets must be designed for winter removal in order to accommodate snow plowing and winter street maintenance.

NEIGHBORHOOD SUPPORT

Parklet sponsors must demonstrate outreach to establish support for a parklet project through:

- Letters of support. The most effective method of demonstrating support for a parklet is through signed letters of support from property owners fronting the project, adjacent businesses, other businesses on the block, merchants associations, neighborhood organizations, or nearby residents and customers.
- Copies of correspondence. If signed letters of support from stakeholders cannot be obtained, please submit a copy of correspondence demonstrating that they have been notified of the intent to install a parklet. See Figure 2.

GENERAL

Parklets must observe the following general guidelines:

- Parklets must be open to public access, and the design should be open and welcoming to passersby. Public parklets shall include two "Public Parklet" signs which state that all seating must be publicly accessible at all times.
- No Advertising. Logos, advertising, and other branding is prohibited.
- Design for easy removal. Because this pilot program must accommodate winter street maintenance, and because parklets may sit on top of critical infrastructure and utilities, they need to be designed for easy removal.

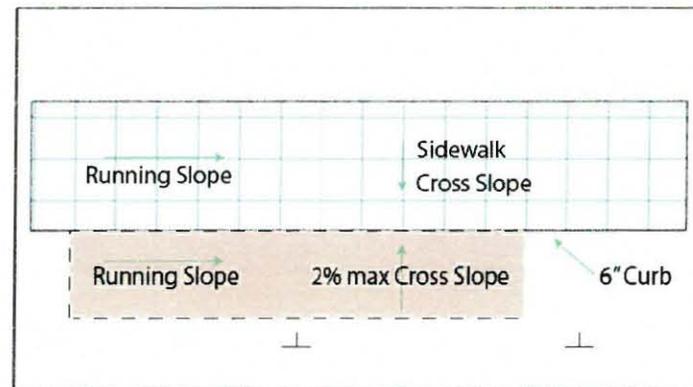
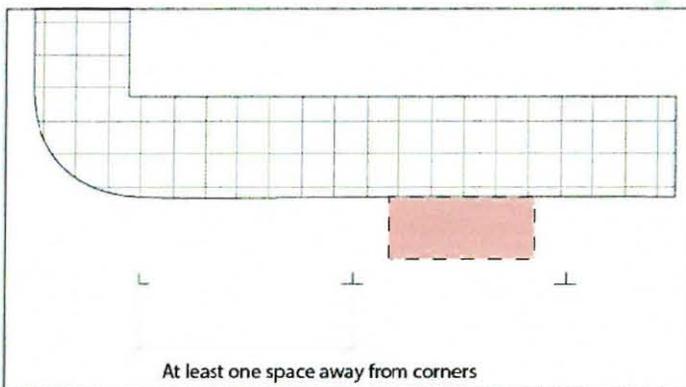
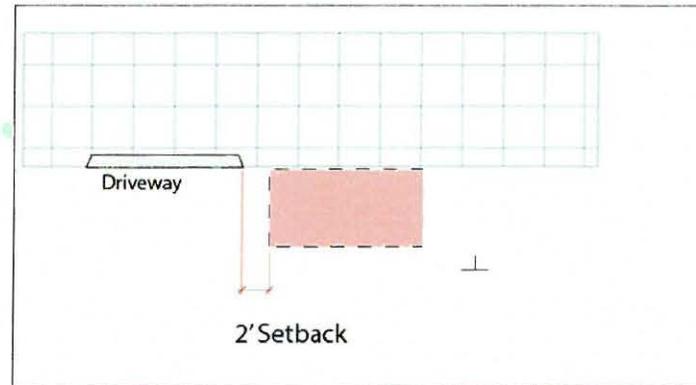
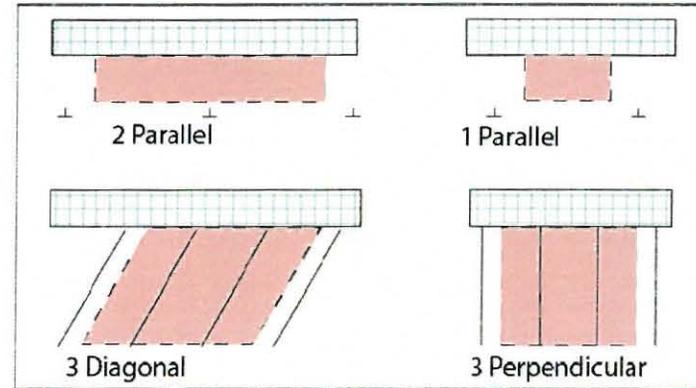


Figure 2. Neighborhood parklet. Image source: Mark Dregger.

FOOTPRINT

The parklet shall:

- Utilize 2 parking spaces (longer or shorter will be considered).
- Not extend beyond the host's lateral property line (this may be amended by request, with written permission of neighboring businesses).
- No more than 10% of parking on any block face may be used.
- Block faces with fewer than 10 stalls will be treated on a case by case basis.
- Not extend more than 6 feet into parallel parking stalls.
- Provide 4 foot setbacks on either side to buffer the parklet from adjacent parking spaces.
- Utilize flooring that is 6 inches high in order to be flush with the curb. This may be modified to match curb height.
- Not be located in front of a fire hydrant, manhole cover or utility access, or within 10-feet on either side of a fire hydrant, in accordance with Salt Lake City Fire Code.



LOCATION

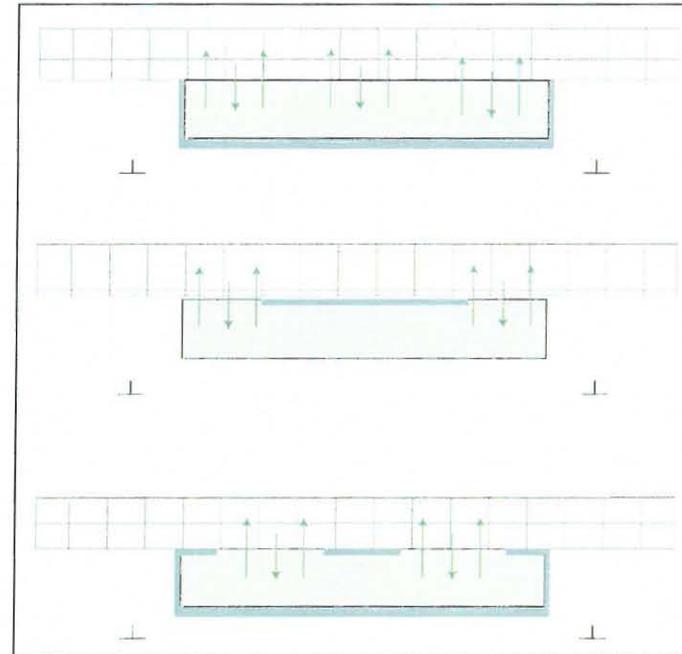
Selection of a parklet location must consider the following criteria:

- **Business:** Must utilize spaces directly in front of the business requesting. The area must not extend beyond the limits of the storefront without the written permission of neighboring businesses.
- **Driveways:** Parklets located next to driveways must be set back two feet from the outside edge of the driveway. If the driveway has been abandoned or no longer provides access to off-street parking space, the driveway may be incorporated into the parklet design.
- **Corners:** Parklets must be located at least one parking space away from an intersection or street corner. A curb extension or some other physical barrier that would protect the parklet in a corner location may allow a corner parklet to be considered on a case-by-case basis.
- **Slope:** Parklets are permitted on streets with a running slope of five percent or less. Parklets on streets with a running slope over five percent pose significant design challenges, leading to a more extensive design and review process, and less likelihood of approval.
- **Impending City projects:** A parklet proposal may be rejected if it conflicts with future programmed streetscape improvements. Parklets installed on streets scheduled for improvements may need to be removed prior to construction of the improvements.
- **Bus zones:** Parklets are not permitted in bus zones, but may be located adjacent to a bus zone.
- **Metered parking:** If your parklet is located in an area with metered parking, you will need to show the locations of the affected parking meters and include their associated parking space numbers and pay associated fees.

ACCESS

The parklet must:

- Provide entrances that are easily accessible from both sidewalk directions, unless specific requirements apply for establishments that serve alcoholic beverages.
- Be publicly accessible and include signage that states "This platform is public space and is not restricted to patrons of any particular business." To that end, table service is not allowed at any parklet.
- Function as an extension of the sidewalk, with multiple points of entry. See image.



FUNCTIONAL DESIGN

The parklet must:

- Contain vertical elements (planters, umbrellas, canopies, etc.) so as to be visible to passing vehicles and to provide appropriate shading for occupants. These overhead elements should not span over the sidewalk, and must have a minimum clearance of 84 inches above the surface of the parklet.
- Consider the streetside appearance of the parklet.
- Contain green elements such as flowers or shrubs. Native plants, plants that provide habitat, and drought-tolerant plants are encouraged.
- Provide a protective, visibly penetrable barrier around the outside edge of the parklet so as to promote occupant safety and discourage illegal activity. The barrier must be set at least 18 inches back from the street side edge.
- Provide slip resistant surface materials.
- Ensure wheelchair users can access and enjoy the parklet.
- Ensure the parklet, and some seating within the parklet, is accessible to people with disabilities.
- Accommodate seasonal removal for winter street maintenance. See figure 4.

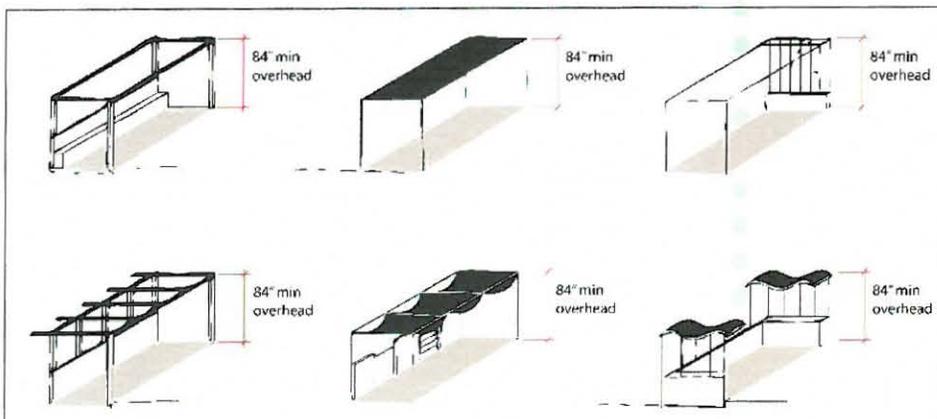


Figure 4. Examples of parklet locations.

SEATING

The parklet must include seating:

- Seating must be easily accessible and include both individual and group seating design.
- The majority of the parklet should be utilized for seating space.
- Seating must show consideration for access by those with disabilities.
- The City encourages permanent seating that is integrated into the parklet structure, so that when moveable furniture is taken in at night, the parklet still feels welcoming.
- Non-permanent seating must be bolted down or taken in after business hours.
- Overall, seating should contribute to an inviting atmosphere that encourages parklet use rather than simply contributing to aesthetic appeal. See figure 5.

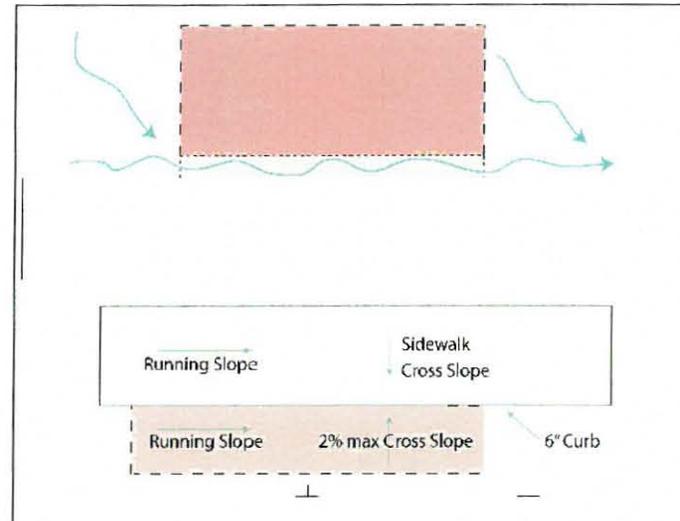


Figure 5. Permanent seating integrated into the parklet design
Image source: San Francisco Parklet Manual, SF Planning

ENGINEERING

The parklet must:

- Maintain an equal grade with the adjoining sidewalk
- Not impede curb or parklet surface drainage. Screen covers are encouraged for openings along curbs to prevent blockage from debris. See image.
- Not exceed 2% grade on the cross slope extending into the street. See image.
- Take into consideration street crown and curb height when designing for cross slope and platform height.
- Take into consideration wind and occupancy load.
- Not attach to (i.e. bolt to) the street in any way.
- Include a gap between the curb and the parklet surface not more than $\frac{1}{2}$ ". A connector spanning the gap is encouraged.
- Must be easily assembled and disassembled.
- Provide access underneath the flooring for cleaning.
- Not include concrete poured directly on the road surface. A plastic slip-sheet can be used to prevent concrete from bonding to the roadbed. Concrete floors should not include structural rebar and must weigh less than 200 pounds per square foot.
- Not use loose particles, such as sand or loose stone, for surface materials.



MATERIALS

High quality, durable and aesthetically appealing materials are encouraged.

- Locally sourced materials can reduce transportation costs.
- Recycled and reclaimed materials can reduce construction costs.
- Low emission materials that emit zero or low levels of volatile organic compounds (VOCs) can help improve air quality.
- Materials that are easy to maintain can reduce the difficulty of removing graffiti and the cost of replacing or repairing damaged plants, railings or other elements. Materials with higher up-front costs can reduce long-term maintenance expenses. See figure 6.



Figure 6. High-quality durable materials
Image source: San Francisco Parklet Manual

SAFETY

The parklet must:

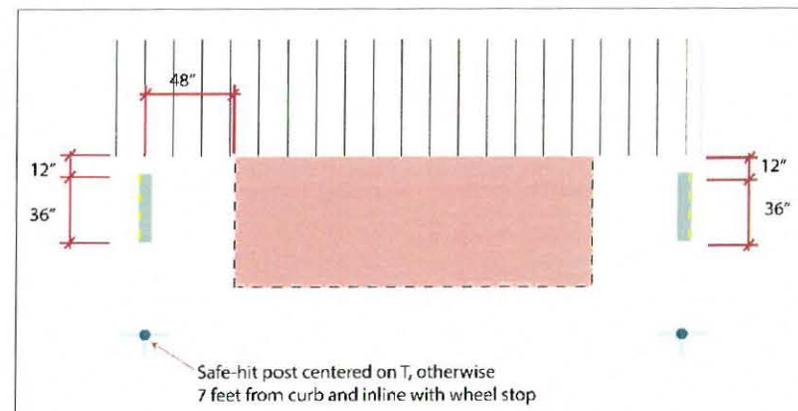
- Include reflective soft-hit posts along streetside borders. See figure 7.
- Provide wheel stops placed 1 foot from the curb on any side adjacent to parking. See figure 8.
- Not be placed in a location where the speed limit exceeds 30 mph.
- Provide lighting, if intended for night use.



Figure 7. Safe-hit posts
Image source: San Francisco Parklet Manual



Figure 8. Wheel stops
Image source: San Francisco Parklet Manual



City of Los Alamitos

Planning Commission

Agenda Report Public Hearing

October 28, 2015
Item No: 8B

To: Chair Riley and Members of the Planning Commission

Via: Steven A. Mendoza, Development Services Director

From: Lisa Kranitz, Assistant City Attorney

Subject: Discussion of Nonconforming Use Provisions

Summary: Discuss with Staff desired provisions relating to Nonconforming Use Provisions, Zoning Ordinance Amendment (ZOA) 15-05 (Citywide) (City Initiated).

Recommendation:

1. Open the Public Hearing; and,
2. Provide direction to Staff as to desired amendments to the City's nonconforming provisions.

Applicant: City Initiated

Project Location: Citywide

Approval Criteria: Section 17.70.020 of the Los Alamitos Municipal Code (LAMC) requires that any proposed amendment be recommended by a resolution to the City Council.

Notice: Since the number of real property owners exceeds 1,000, notices announcing the Public Hearing were published as a 1/8 page ad in the News Enterprise on October 14, 2015 for a hearing on October 28, 2015.

Environmental: An environmental determination will be made after parameters are provided.

Background

On September 23, 2015 the Planning Commission adopted a Resolution of Intention to amend the provisions of Chapter 17.64 of the Los Alamitos Code relating to the City's nonconforming provisions. While the move to amend the City's Code was spurred on by ambiguous provisions that were brought to light in relation to the expansion of a nonconforming use in an existing building, the City's entire Nonconforming Use Chapter needs to be revised to be more "user friendly" for both Staff and the public. In order to revise the Code, Staff needs direction from the Planning Commission.

Discussion

The Los Alamitos Municipal Code contains the following definitions relating to nonconformities:

"Nonconforming lot" means a legal parcel of land having less area, frontage, or dimensions than required in the zoning district where it is located.

"Nonconforming structure" means a structure or a portion of a structure that was designed, and erected or structurally altered before the effective date of these regulations or subsequent amendments, and which, at the time it was constructed or altered, was in compliance with applicable building and zoning codes but no longer complies due to changes or amendments.

"Nonconforming use" means a use of a structure (either conforming or nonconforming) or land that was legally established and maintained before the adoption of this zoning code and that does not conform to current code provisions governing allowable land uses for the zoning district where the use is located.

While these definitions seem straightforward, the actual provisions relating to the continuance and elimination of nonconforming uses is very difficult to discern. Rather than try to examine the Code provisions section by section, Staff seeks input on the following questions. Once direction is provided, a draft ordinance will be brought back for the Planning Commission's recommendation.

Staff plans on guiding the Planning Commission through this process in multiple steps. The first step will be to create an understanding of the different types of nonconformities that can exist through use of the attached discussion paper prepared by the City of Tustin's Community Development Department. Nonconformities include:

- Nonconforming parcel – a parcel that does not conform to current size requirements.
- Nonconforming use of land (no primary structure involved) – a use of land not allowed in a zone, such as a nursery in a residential zone.

- Nonconforming use of a structure – a use in a structure not allowed in a zone, such as a market in a residential zone.
- Nonconforming structures – a structure that does not comply with the development standards, such as a building that does not have sufficient parking or setbacks; another term for this could be nonconforming site development.
- Nonconforming building types – a use that is in an incorrect building type, such as a commercial enterprise in a building built for residential standards.

The City is concerned with legal nonconformities, i.e., those that were legal when established, but which no longer comply due to changes in regulations.

The second step will be for the Planning Commission to discuss various policy questions to provide direction to Staff. These questions include:

- What amortization period should be provided for a nonconforming structure, if any?
 - The Code is very difficult to understand but seems to provide between 30 and 50 years from the date that the certificate of occupancy was issued.
 - It is not uncommon to allow nonconforming structures to remain in perpetuity.
 - The Commission may want to consider an amortization period for structures if the Type of structure is incorrect (Type I vs. Type V) for the type of use.
- What amortization period should be provided for a nonconforming use of land with only accessory structures?
 - The Code currently provides a two year period.
- What amortization period should be provided for a nonconforming use of a conforming structure?
- What amortization period should be provided for a nonconforming use of a non-conforming structure?
- What amortization period for a conforming use in the wrong type of structure – such as businesses being run out of homes in the C-G zone and churches in industrial buildings?
- Should a nonconforming use in a structure be allowed to expand within that structure?
- What to do with legal, unbuildable lots –
 - Where there is existing development;

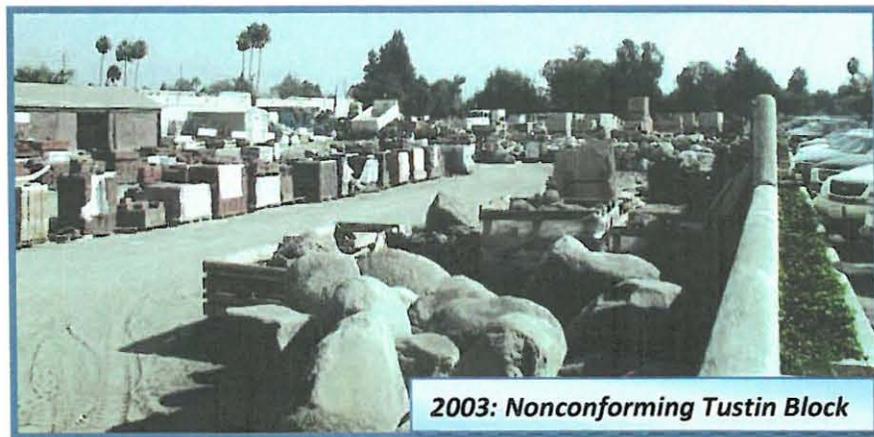
- Where the lots are empty.
- Should maintenance of a nonconforming use require a CUP?
- What constitutes structural alteration that would trigger a CUP requirement – should it include changes that do not actually enlarge the building or use such as:
 - Façade improvements;
 - Tenant improvements – such as removal of interior partition walls;
 - Changes to entrance or loading docks?

As the Planning Commission analyzes this issue, it should keep in mind that the recent General Plan Amendments to the Land Use Chapter will create new nonconforming uses. Specifically:

- Site 1 (Industrial to Multi-family) – all existing industrial uses are nonconforming;
- All Planned Industrial – commercial recreation uses in this designation will become nonconforming;
- Site 6 (Retail Business to Mixed Use) – all uses that are not permitted/conditionally permitted in the General Commercial zone that are on Katella and Los Alamitos will become nonconforming;
- Site 7 (Professional Office & Community/Institutional to Retail Business) – all uses that are not commercial retail, personal services, general services will become nonconforming.

Attachments: 1) City of Tustin Nonconforming Uses
2) Letter - SheppardMullin

NONCONFORMING STRUCTURES, USES AND LOTS



September
2011

Community Development Department

A Discussion of the Intent, Application, and Practice of
California Land Use and Planning Law Governing
Nonconforming Structures, Uses and Lots.





Nonconforming Structures, Uses and Lots

*A DISCUSSION OF THE INTENT AND PRACTICE OF CALIFORNIA
LAND USE AND PLANNING LAW GOVERNING NONCONFORMING
STRUCTURES, USES AND LOTS*

September 2011

City of Tustin Community Development Department





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Nonconforming Structures, Uses and Lots

A DISCUSSION OF THE INTENT AND PRACTICE OF CALIFORNIA LAND USE AND PLANNING LAW GOVERNING NONCONFORMING STRUCTURES, USES AND LOTS

PURPOSE |

On March 1, 2011, the Tustin City Council directed Community Development Department staff to draft a code amendment to provide clarity, provide consistency with prior practice, and reduce ambiguity of the term “nonconforming” throughout the Tustin City Code (TCC).

This document is intended to discuss the intent and practice of California Land Use and Planning Law governing nonconforming structures, uses and lots. Issues discussed in this report include:

- An analysis of the concept of nonconforming structures, uses, and lots.
- What is considered nonconforming?
- What is *not* considered nonconforming?
- How are non-conforming regulations applied?
- Enlargement, repair, and destruction of nonconformities.
- How illegal structures, uses, and lots are identified and addressed.
- Actual case example.
- Conclusion.

INTRODUCTION |

One interest of community zoning/planning is to establish and control land use. The legal basis for all land use regulation is the police power of a city to protect the public health, safety, and welfare of its citizens. The City of Tustin has adopted codes and land use regulations to confine buildings and land uses to certain locations to protect the health, safety, and welfare of its citizens, and to shape the physical layout and appearance of the community including site planning and urban design. The Building Code, Zoning Code and Subdivision Ordinance are the primary regulatory tools used to accomplish these goals. Staff takes great care when preparing new ordinances for Planning Commission and City Council consideration to minimize the creation of nonconformities. However, as the community’s vision for its built environment continues to evolve and change, revision of the City’s regulations (use requirements, setbacks, height limitations, etc.) will inevitably result in the creation of nonconforming structures, uses or lots.



To ensure that a community's adopted vision and goals are fully accomplished over time, regulatory provisions are put in place to require nonconforming structures, uses, or lots to be made conforming or ensure their replacement over time. Any change in a structure, use, or lot that gives permanency to, or expands the nonconformity would not be consistent with this purpose and are typically prohibited. In most cases, nonconformities are allowed to continue unaltered (structures may be repaired within certain limits) until the end of their economic life when they would eventually be replaced with a conforming structure, use or lot.

WHAT IS NONCONFORMING? |

Nonconforming structures, uses and lots are relatively commonplace, but the concept may not be completely understood. One might picture a dusty, old brick-making business, surrounded by single family homes, that long predates its current residential zoning; or, an old church that appears to be too close to a street property line because the City widened the right-of-way some time in the past and eliminated a portion of the property's front yard.

The Zoning Code identifies development limitations associated with various Districts identified on the City's Zoning Maps that establish uniform building setbacks, height limitations, parking requirements, minimum lot sizes, identify allowed uses, etc. Zoning rules change or are updated over time to guide, control and regulate future development.

A legal nonconforming structure, use or lot is *caused by a governmental action* that changes the Zoning Code, the Zoning Map, or the Subdivision Ordinance. *All legal nonconforming structures, uses or lots were lawfully established under the codes at the time, but due to the adoption of a new ordinance, regulation, or map revision, the property no longer conforms to the policies and standards of the code in which the property resides.*¹ Legal nonconforming is sometimes referred to with the term "grandfathered."²

Nonconforming Structure, use, or lot – A nonconforming structure, use, or lot has been lawfully established in the past but no longer meets the current code requirements (i.e. setback, height, parking, use, lot size, etc.)

As a general rule, nonconforming regulations presume that a nonconformity is detrimental to the public interest (health, safety, morals or welfare), and that the nonconformity needs to be brought into

¹ *Curtin's California Land Use and Planning Law*, Cecily Talbert Barclay, Solano Press Books, 2011, *Guide to California Planning*, William Fulton and Paul Shigley, Solano Press Books, 2005, *Eastman's California Land Use and Municipal Law*, John Eastman, 2006, *A Planner's Dictionary*, Edited by Michael Davidson and Fay Dolnick, American Planning Association, 2005.

² Note: Under the Building Code, a lawfully constructed building is not affected by subsequent Building Code updates that may occur in future years. However, when an addition/alteration is proposed to a lawfully constructed older building, the addition/alteration would be required to meet current Building Code requirements and some existing building components (e.g. fire sprinklers, electrical panels, energy features, etc.) would be required to be upgraded at the time of permit issuance to current standards.

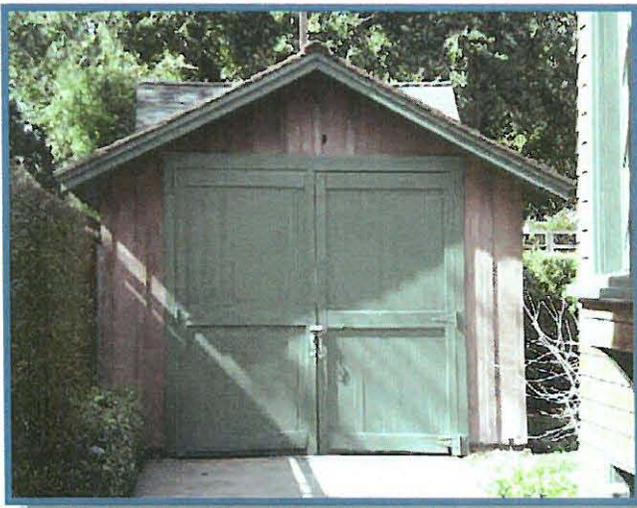
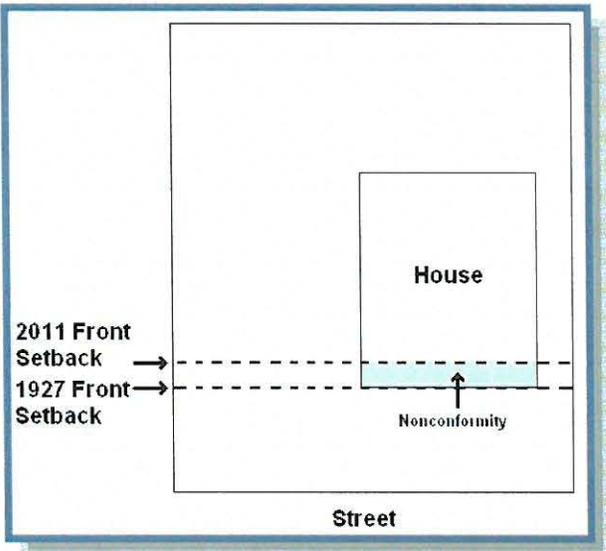


conformance with the current code at some point in time. For example, a community that finds that an existing code allows structures to be built too tall may adopt a code amendment to lower the height limit of new construction. The code looks to the future and assumes that existing, lawfully established nonconforming buildings that exceed the new height limit may continue to exist but will be brought into conformance or eliminated over time.

Nonconforming Structures – In regards to the built environment of a community, the Zoning Code implements the City’s General Plan and translates the goals and principles of that Plan to parcel-specific regulations intended to guide or restrict development to the overall aesthetic vision of the community. To accomplish this vision, the Zoning Code identifies building limitations and design requirements that restrict the height, setback, design, parking, etc. to ensure that all buildings proposed within a particular Zoning District are similar in bulk, scale and purpose.

A nonconforming structure is a lawful structure existing on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. Again, a new zoning ordinance anticipates that a nonconforming structure will be eliminated over time and replaced with a conforming structure.

Nonconforming Structure – In the example at right, the street setback was changed to require more open space adjacent to a street after the house was lawfully constructed.

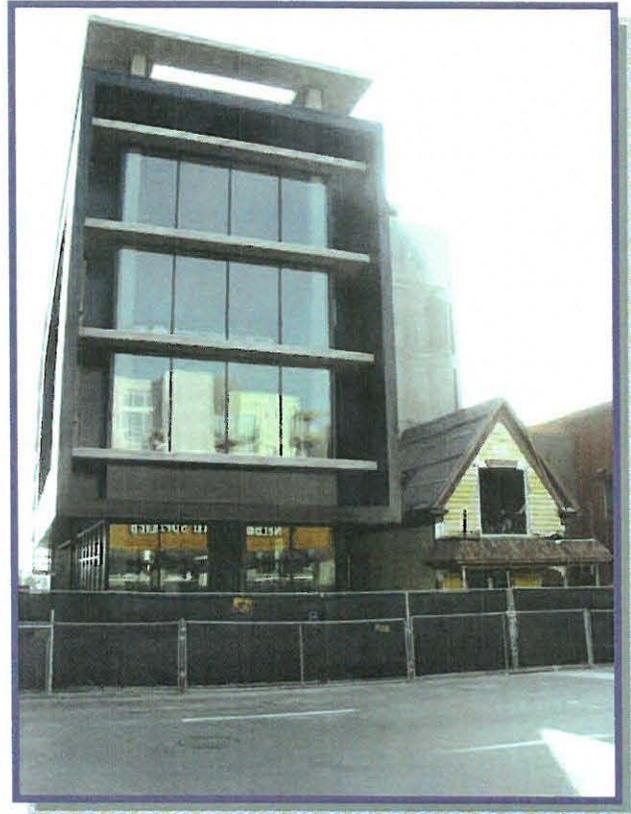


Nonconforming Structure – In the example at left, this garage was built to accommodate one car before the adoption of the current zoning requirement for a two car garage.



Nonconforming Uses - The Zoning Code identifies the types of land *uses* that a community desires to be permitted, conditionally permitted, or prohibited within certain Districts identified on the City's Zoning Map. A nonconforming use describes a lawful use existing on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. Again, a new zoning ordinance anticipates that nonconforming uses will be eliminated over time and replaced with conforming uses.

Nonconforming Use - In the example at right, a single family residential use is a use that is nonconforming to current downtown retail/office zoning.



Nonconforming Lots - The Zoning Code and Subdivision Ordinance establishes minimum lot sizes for construction of a building. Some properties have developed prior to the establishment of these code restrictions. A nonconforming lot describes a lawful lot existing on the effective date of a new zoning or subdivision requirement that has continued since that time without conformance to the ordinance. Again, a new ordinance anticipates that nonconforming lots will be eliminated over time (possibly combined with an adjacent lot) and eventually made conforming.

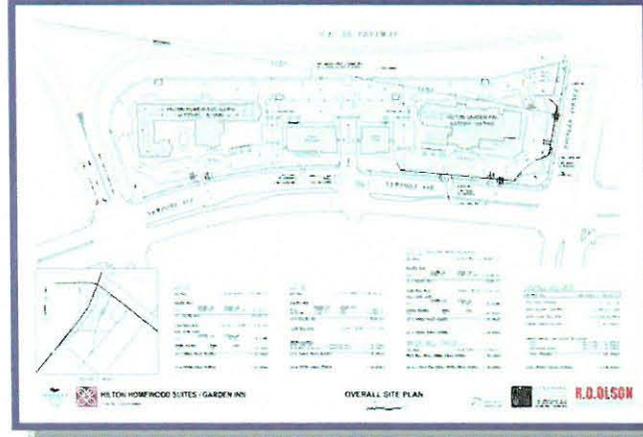
Nonconforming Lot - In the example at left, a nonconforming lot has been developed into a single family use.



Nonconforming use – Tustin Block (left) on Newport Ave. was a nonconforming use that was replaced by the Arbor Walk residential project (below).



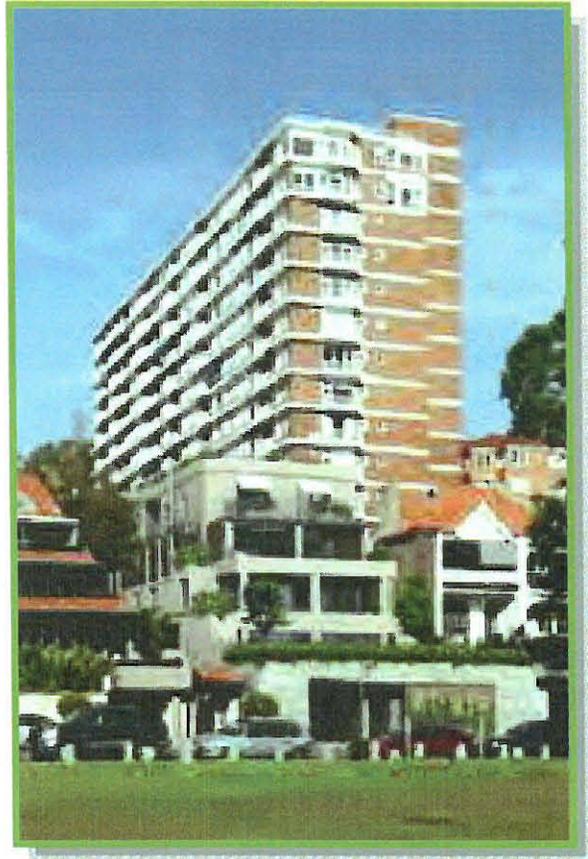
Nonconforming use – Existing manufacturing uses (above) were made nonconforming through adoption of the Pacific Center East Specific Plan which supports development of hotels, retail, office and related uses such as the Hilton Garden Inn (R.D. Olson Agreement approved by City Council in July 2011). Example pictured at upper right was built in Florida).





Nonconforming structures, uses, and lots are not always old. Sometimes nonconforming structures are new. There are recent examples of community actions aimed at correcting modern zoning situations. Specifically, when a community determines that the current code does not adequately protect the health, safety, morals and welfare of the community, the community may determine that the current code should be modified. Community's can occasionally change their minds about how a community should be developed.

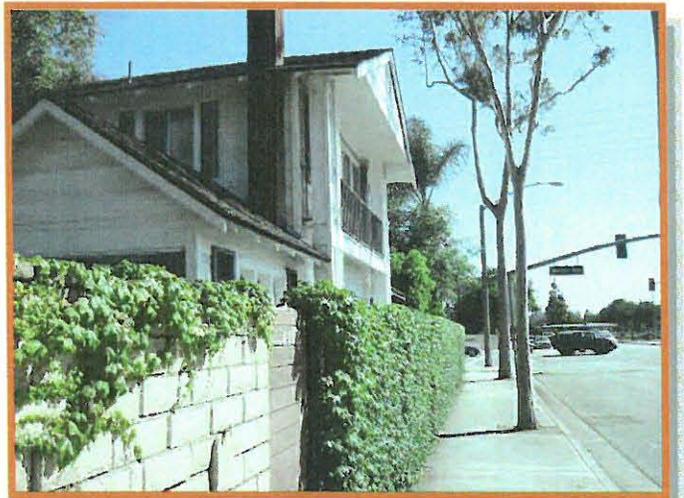
In the example at right, community concern after a tall residential building was approved could convince community leaders to enact a zoning code amendment limiting all future construction to 4-stories, the historic height limit of the existing neighborhood's built environment. Should this occur, the new, lawfully established high-rise building would be made nonconforming.



WHAT IS *NOT* NONCONFORMING? |

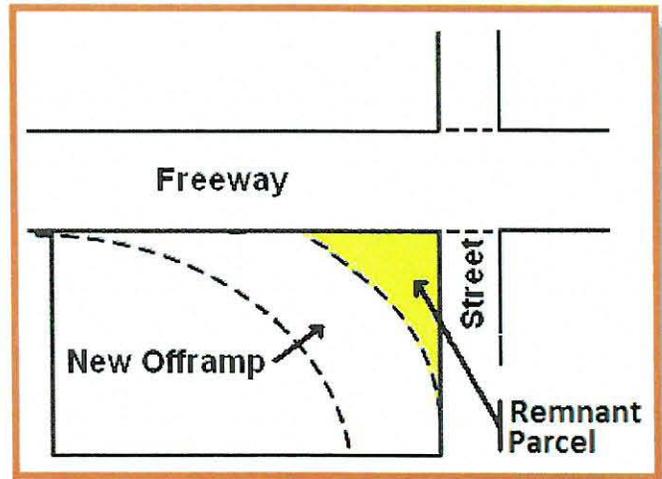
There are certain instances when an existing structure, use or lot is out of conformance with the adopted code but is *not* considered to be nonconforming. Public right-of-way takings, adaptive reuse of historic structures, illegal structures/alterations, illegal uses, and illegal lots are examples of these circumstances that are examined in more detail below.

Right-of-Way Takings – Periodically, a community may take actions that widen or improve public right-of-ways. [Pictured at right, the “Nisson House” front yard was eliminated by the widening of Red Hill Avenue]. Staff attempts to ensure that such “takings” will have little impact upon a lawfully established structure, use, or lot. Although right-of-way takings occur through an action by a governmental agency similar to the adoption of a more restrictive zoning code regulation, the code mandates that structures or lots made nonconforming (e.g.



setback, lot size, parking, etc.) as a result of the acquisition of public right-of-way be considered conforming unless determined to be a nuisance or threat to health.

Although legal in status, lots left as remnant parcels by a right-of-way taking are often unbuildable pursuant to the Zoning Code due to their small size, location or other constraints. Residential, commercial or industrial buildings affected by a right-of-way taking that are considered conforming may be altered or added to without restriction. Remnant (undersized or inaccessible) parcels are sometimes problematic when acquired by misled or uninformed owners who erroneously believe a small remnant parcel to be developable.



Adaptive Reuse of Historic Structures – The City of Tustin’s codes allow some expansion/alteration of a nonconforming, qualified historic structure (discussed later in this article). The City also supports adaptive reuse of historic structures. Sometimes, a community’s vision for the use of an area or the built environment can change. For example, a zone change from residential to commercial use may leave behind older buildings that may not appear to be consistent with the planned use of the area. Market pressures can result in many old buildings being torn down, altered, or replaced with buildings that are more supportive of the planned commercial use. Remember, the elimination of nonconforming buildings is a goal of the community’s new vision for the neighborhood and a requirement of new zoning regulations.



Adaptive reuse preserves the important physical attributes of a historic resource for future generations to appreciate by adapting it to purposes other than what the building was originally designed for (e.g., conversion of a historic sardine cannery into a museum, or a historic single family home into a teahouse use – such as the McCharles House shown at left). Generally, adaptive reuse converts a use (single family house) that is nonconforming because of its location (commercial zone) into a conforming use (restaurant). A lawfully established adaptive reuse may require an owner to make potential Building Code upgrades, and is considered conforming under the code. The McCharles Tea House (left) is an example of

an adaptive reuse success story in Tustin. It was originally built as a single family house in 1899, and was converted to a commercial teahouse use in 1985. The owner and City staff were able to utilize the

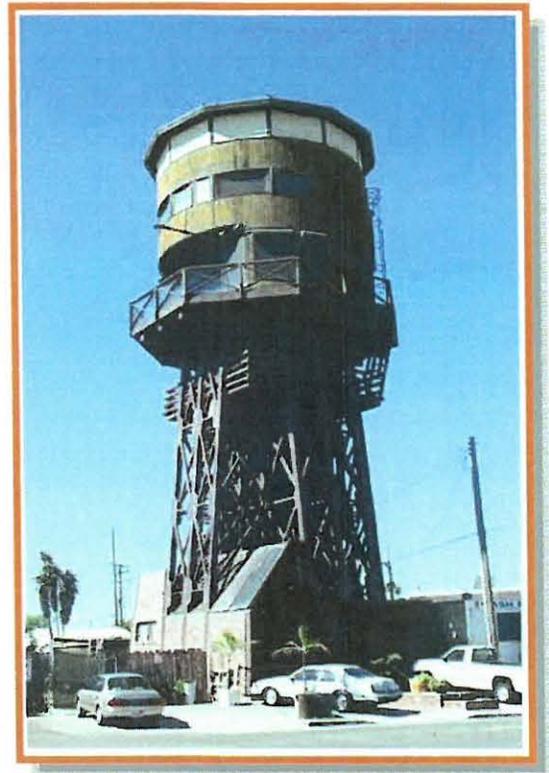


California Historic Building Code to grant certain allowances (the Teahouse does not fully comply with zoning and building code standards) to ensure that the architectural design of this important historic resource was preserved for future generations while at the same time extending its economic life as a commercial building.

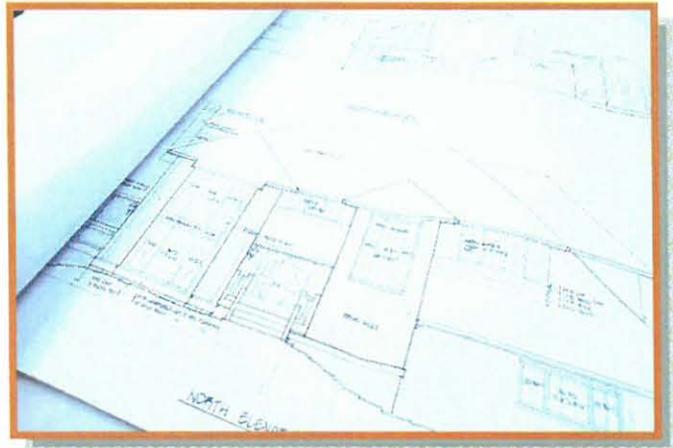
Structures Where Exceptions Have Been Granted – Variances and conditional use permits are methods by which a property owner may seek and obtain relief from the strict stipulations of a zoning code requirement. The allowances granted by a variance or use permit runs with the land, which means that subsequent owners may enjoy the benefits granted by the variance or conditional use permit as long as the stipulations or conditions of approval are met. Although variances may not be granted to authorize a use that is not otherwise allowed by the adopted zoning regulations, deviations from zoning regulations governing lot size, setback, height, parking, etc. may be granted, typically because the property experiences some hardship that prevents it from enjoying the same rights as other similar properties. Similarly, conditional use permits are utilized to authorize special development regulations that apply to the property.

Once granted, the variations in setback, parking, height, etc. are not considered to be nonconforming, but are recognized as conforming. Remember, a nonconforming structure, use, or lot lawfully existed *prior* to a change in a code. A structure developed utilizing a variance or conditional use permit differs from a nonconforming structure in that the variation occurred lawfully *after* the adoption of the code.

Code Exceptions – In the example at right, a railroad water tower was lawfully converted to a residence through discretionary approvals such as a variance and/or conditional use permit, exempting the structure from various zoning regulations (height, setback, etc.). (Adaptive reuse of historic buildings is discussed later in this report). Note: the structure is not considered nonconforming since the exceptions were lawfully established *after* the adoption of the code, not prior to.



Structures Approved But Never Built - Approval of a project proposal prior to a code amendment does not guarantee legal nonconforming status. Sometimes a code amendment is proposed while projects are “on the drawing board.” Projects may be in plan check or be issued permits during the time an amendment is proposed, adopted and made effective. In most cases, when a code amendment is adopted, projects in plan check or that have been issued a valid permit may continue to be implemented consistent with the previous code (some exceptions exist pertaining to urgency ordinances and urgent life-safety building code amendments).³ However, the right to execute a project using a prior code typically expires when projects are not built in a timely manner, and when permits or plan checks are allowed to expire. An adopted moratorium can prevent the issuance of additional building permits to ensure that future development is consistent with a new code.



Again, a structure, use, or lot must be *lawfully established* (in place and given final City approval), and be later found to be inconsistent with a newer, adopted zoning regulation to be considered nonconforming.

Illegal Structures, Uses, or Lots - A structure, use or lot that is out of conformance with the adopted code is *not* considered to be nonconforming when it has been illegally established. An illegal structure, use, or lot is *caused by the actions of a past or current owner, tenant or property manager*, and not a governmental action.⁴ Because the structure, use or lot was not *lawfully established*, it is ineligible to utilize the responsibilities or privileges afforded to a lawfully established nonconforming structure, use, or lot. Specifically, illegal structures, uses or lots may not remain in their current state indefinitely, but are *required to be brought into immediate compliance with current code standards*. Illegal nonconformities can pose life-safety concerns to the property owner, neighbors and to others, including safety personnel such as fire and police



³ *Stubblefield Construction v. City of San Bernardino* – 32 Cal. App. 4th 687, 38 Cal. Rptr. 2d 413 (1995) – The California Court of Appeals determined that the City followed proper procedures in adopting a moratorium and revising the zoning requirements prior to an apartment developer obtaining the required permit approvals.

⁴ *United States v. Monsanto Company* – 858 F. 2d 160, 28 ERC 1177, 57 USLW 2170, 19 Env'tl. (1988) – The case involved determining responsibility for environmental contamination left by a lessee of a property owned by the Monsanto Company. The United States Court of Appeal (4th Circuit) ruled that an owner is responsible for the actions of a tenant and stated it did “not sanction such willful or negligent blindness on the part of absentee owners.”



respondents. The following discussion further describes illegal structures, uses, and lots.

- **Illegal Structure** – An illegal structure, sometimes referred to as a “bootlegged structure,” is a building constructed without permission of the City and without required plan check or building inspector oversight. Depending upon the expertise of the builder, an illegal structure may or may not meet the adopted code requirements (e.g. the Zoning Code, Building Code, etc.). Examples of illegal structures include room additions, converted garage apartments, signs erected without authorization, structural modification of the interior of an existing building without authorization, etc.

PANEL REJECTS BID TO LEGALIZE SOME GARAGE DWELLINGS

May 28, 1997 | HUGO MARTIN | L.A. TIMES STAFF WRITER

A Los Angeles City Council panel rejected a proposal Tuesday to legalize some of the city's 50,000 to 100,000 bootleg garage dwellings, opting instead to crack down on landlords who rent out the illegally converted living spaces.

In response to eight deaths in three months from fires in converted garages, a joint council committee proposed making it a misdemeanor to rent out such accommodations. The penalty would be a \$1,000 fine.

BOOTLEG DWELLINGS BECOMING A FIXTURE IN THE SOUTHLAND

May 11, 1990 | SHAWN HUBLER | L.A. TIMES STAFF WRITER

Dennis Cassity's beach house is a modest place, really. OK, so it's a garage. But such a cozy garage! Tiled bathroom, kitchenette - and all for about \$100 a month less than the cheapest apartment in town.

"Of course, I knew it was illegal," the 40-year-old computer repairman chuckled, recalling the day he found his Hermosa Beach apartment. "I was born and raised on the beach. I know a bootleg (apartment) when I see one." No matter. Cassity took the place anyway.

When an illegal structure is constructed in noncompliance with the City's zoning requirements (i.e. setback, height, use, etc), the building is not considered nonconforming. When an illegal structure is discovered, an owner would be required by staff to submit plans showing that the building meets current Zoning and Building Code requirements, obtain a permit, and pass building inspections to legalize the illegal structure.

Even a structure erected with a City-issued permit could later be determined illegal if for instance a City official were to have mistakenly allowed the structure to be constructed in violation of the code.⁵ When discovered, false statements, errors and/or omissions made by the applicant, owner, architect, etc., can result in a structure, use, or lot being reclassified as illegal. *Hypothetical example; an architect's plans approved by the City indicates that a proposed structure is legally set back from a property line. After a permit is issued and construction begun, a building inspector notes on the job site*

⁵ *Horwitz v. City of Los Angeles*, No. B172053, 04 C.D.O.S. 11002 (2005) – an appellate court ordered the City of Los Angeles to revoke all building permits and the certificate of occupancy issued in error for building additions to a single family home. “Just as the city has no discretion to deny a building permit when an applicant has complied with all applicable ordinances, the city has no discretion to issue a permit in the absence of compliance.”

CRACKDOWN GOES BEYOND GARAGE CONVERSIONS

May 21, 2009 | LEILONI DE GRUY | LOS ANGELES WAVE STAFF WRITER

COMPTON — Citing what officials call a zero-tolerance policy on safety code violations, code enforcement officers here are cracking down on illegal garage conversions. These conversions, in which areas for automobile storage are modified into living spaces, are “a major problem,” said City Manager Charles Evans. “Our problem is that many of our garages are converted illegally and they don’t meet the health and safety requirements. And they pose a danger and a safety hazard to the people who occupy them.”

“From the outside, a lot of these conversions look like they are garages but on the inside there is a wall,” said Deputy Fire Chief Marcel Melanson. He said the lack of a proper exit endangers both residents and the fire fighters who might be called on to rescue them. “It definitely poses a danger to our fire fighters when they are working in that type of environment.”

SISTERS KILLED BY FIRE MEMORIALIZED IN LONG BEACH ORDINANCE

December 15, 2010 | PAUL EAKINS | LONG BEACH PRESS TELEGRAM STAFF WRITER

Tuesday's City Council meeting had an emotional moment, when three sisters who were killed in a fire in an illegally converted garage were remembered.

Family and friends of the sisters, Jasmine, Jocelyn and Stephanie Aviles, were at the meeting, where the council unanimously voted to name a section of Long Beach's municipal code that addresses illegal garage conversions after the girls. The ordinance will be known as "Aviles Law."

Following the Dec. 14, 2007, fire, the city cracked down on illegal conversions. Fire officials said Tuesday that since 2007 Long Beach has cited more than 550 illegal conversions with fines totaling almost \$200,000.



that the building is not set back as indicated on the approved plans. In fact, the structure is observed to project over the side property line into a neighbor's yard. Regardless of who is responsible for the error (e.g. the owner's architect, a City plan checker, etc.), and regardless of the fact that a building permit was issued, the building is illegally projecting over a property line and must be corrected immediately.



In addition, illegal additions to a lawfully established nonconforming structure or use often results in the loss of a structure's nonconforming status. As noted previously, a nonconforming structure, use or lot may continue indefinitely but *may not be enlarged, modified, etc.* When a nonconforming structure or use is expanded illegally, it loses its right to continue indefinitely and must be brought into full

conformance with the code.⁶ In some cases, a legal nonconforming status can be reestablished if the illegal modification is removed.

Self-imposed hardships are not a finding to support Planning Commission issuance of a Variance to allow an illegal structure to violate a Zoning Code requirement, so it is typical for an owner of an illegally established structure to either modify it to meet the Zoning and Building Codes or have it removed. An agency can actually abuse its discretion by granting a building permit in an attempt to legitimize an illegal nonconformity⁷ [see also Footnote 8, *City and County of San Francisco v. Board of Permit Appeals*, 207 Cal. App. 4th 687, 38 Cal. Rptr. 2d 413 (1995)].



HOUSE FIRE DISPLACES 8 PEOPLE

July 25, 2011 | CARY ASHBY | NORWALK REFLECTOR STAFF WRITER

A Main Street house fire has displaced eight people from their three apartments.

The cause of the blaze, which started in the northwest corner of the basement, is an overloaded circuit. Beck said the tenants had an air conditioning unit, TV and other things plugged into the same circuit.

Displaced from Sunday's fire were one couple, three friends who lived together and a mother and her two young sons.

The house, built in the early 1900s...

Again, the purpose of nonconforming regulations is to eventually eliminate nonconformities. *Selective enforcement can jeopardize the City's fair application of the code in the eyes of a court.*

What about illegal older Buildings? - One might think that because a particular structure or use has been around for a long period of time that it is obviously nonconforming or "grandfathered," or that because a structure is old that an owner should be allowed to continue to preserve it and use it "as is." This idea is not consistent with the concept of adaptive reuse, which presumes that the owner of the property has legally obtained the proper permits and that the building was adapted (upgraded to meet applicable Building Codes). It is also not consistent with the goal that nonconforming structures, uses and lots be eventually made to conform. Illegal additions (even old ones) may detract from the social, cultural or historical significance of an important historic

⁶ *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 8 Cal. Rptr. 2d 385 (1992) – The California Court of Appeals found that the City of Costa Mesa could not require the abandonment of a tavern after the expiration of a conditional use permit authorizing a game room in the tavern. The court ruled that the City could have required elimination of the game room but not the termination of a business that had operated legally for 35 years.

⁷ *Stolman v. City of Los Angeles*, No. B164169, 04 C.D.O.S. 30, 2004 DJDAR 22 (2004), an appellate court overturned the City of Los Angeles's approval of a variance that allowed the expansion of a nonconforming use. The court determined that a proposal to expand a gas station located in a residential zone did not meet the city's criteria for a variance; there was no evidence that imposing existing zoning requirements would create a hardship for the landowner or business owner — a requirement for a variance.

resource. Most importantly, old structures or uses must be lawfully established to ensure that they do not pose a hazard to occupants or the community.

What about older buildings where no permits can be found? - Many structures within the City of Tustin are old and permits may not be on file with the Community Development Department. An absence of proper legal documentation does not automatically result in a City determination that a structure, use or lot is legal or illegal. Tustin staff routinely works with affected property owners and various public agencies (Water Department, County Assessor, etc.) to review official and unofficial documentation to establish whether a structure, use or lot is legal or illegal prior to requesting a property owner to pursue any corrective action (see *How Illegal Structures, Uses and Lots Are Identified and Addressed* below). If an older structure is determined to be lawfully established, information would be added to City records documenting the fact in order to create a record for reference by future staff and property

owners, and the matter would be closed. Based upon the whole record, if City staff concludes that a structure appears to be illegal, the property owner is requested to immediately correct the concern.

In fact, many permits are issued where no permits exist for older structures when it is clear that the construction was conventional and sound construction practices were employed consistent with the Building Code adopted at the time.

Illegal additions can be very damaging to *historic structures* since the original (and historically important) character and integrity of house can be lost or significantly harmed. Illegal improvements are often out of historical context, and are inappropriate for the style and period of the historic structure. Oftentimes, the historic integrity, character and context of the historic structure can only be restored through the removal of the illegal additions.

- **Illegal use** - The regulation and enforcement of land use regulations is important in preventing potential life-safety conflicts between land uses and ensures the health, safety and welfare of the

ILLEGAL UNITS 'ALL OVER' COSTA MESA

February 28, 2011 | FRANK MICKADEIT | ORANGE COUNTY REGISTER COLUMNIST

How many so-called "granny flats" and "spare bedrooms" are actually converted garages like the one in Costa Mesa where 17-year-old Luke Upton died Thursday morning?

"This is all over Costa Mesa," says Councilman Jim Righeimer, who went out to the scene with city fire and building officials on Saturday. "Staff is very good (about enforcing building codes) when they know about it, but you have so many people in the community turning a blind eye."





community. Illegal uses occur when an owner, tenant, etc. illegally introduces a land use to a site that is not presently zoned for such a use.⁸ Examples of illegal uses include:

- Residential garage converted to an apartment without permits.
- Attic or basements converted to an apartment without permits.
- Introduction of an auto repair business in a single family zone.
- Creating a rooming house out of a single family home.
- A sexually oriented business without permit
- An industrial building used as a residence.
- Occupancy of a structure that intensifies the use of the property without upgrades required by the Building Code to accommodate such intensification.

3 ARRESTED IN CULTIVATING HASHISH AFTER GARAGE FIRE

MARCH 29, 2011|BY SEAN EMERY | ORANGE COUNTY REGISTER

SANTA ANA – Two men and a woman suspected of cultivating hashish were arrested after officers responded to a suspicious fire at a home in Santa Ana Monday night, police said.

Firefighters responding to a blaze in the garage of a residence ...suspected that the garage was being used as a methamphetamine lab but later realized that the men were using the equipment to extract hashish from marijuana...

TWO PEOPLE SHOT, KILLED AT BOOTLEG LIQUOR JOINT

Sunday, 14 Nov 2010 - By Ken McCall and Marc Katz Staff Writers

DAYTON -- Two people were killed during a robbery at a Germantown Road residence early Sunday morning, according to police.

“The residence was set up as a boot joint, which is an after-hours illegal liquor establishment...”



A lawfully established structure is constructed to support a specific intended use. Illegal uses pose serious safety risks to occupants and safety personnel by ignoring the requirement to install Building and Fire Code upgrades prior to such use. Illegal uses also can negatively impact community services (i.e. overcrowding and excessive street parking, classroom size, park use, water and sewer service, etc.), negatively impacting the overall quality of life of an affected neighborhood. The introduction of illegal uses can have a deleterious secondary effect upon sensitive uses and persons.

⁸ *City and County of San Francisco v. Board of Permit Appeals*, 207 Cal. App. 3d 1099, 255 Cal. Rptr. 307 (1989), The Board of Permit Appeals overruled a zoning administrator’s denial of a permit to allow an owner to retain an existing, illegal unit on a property zoned for single-dwelling use. The unit appeared to have been added over a period of years spanning 1926 and 1938, with a resulting financial benefit accrued to several subsequent property owners. The Board of Appeals partially based its decision on verbal testimony offered by neighbors but no reliable physical evidence was presented. The Court of Appeals of California reversed the Board of Permit Appeals decision and upheld the City/County determination that the unit was illegal.



Once identified, property owners are required to eliminate the violation. While owners have the option of applying for a zone change, the Planning Commission and City Council would be required to consider the effect of introducing the new land use into the property's zoning designation *throughout the City*, since spot zoning (applying a zoning regulation to only one site) is specifically prohibited by State law.

- **Illegal lot** – Illegal lots occur when a property owner illegally deeds or otherwise conveys a portion of a legal lot to another party without complying with the State Subdivision Map Act and the City's Subdivision Code. Illegal lots occur infrequently, but modern examples do occur. There are recent cases where real estate agents, escrow agents and others conspired to sell apartment units to unsuspecting buyers as condominiums. Such unscrupulous behavior typically results in prison sentences for guilty sellers.

Very old lots established prior to the enactment of modern subdivision laws are also sometimes considered illegal.⁹ Very few options exist for property owners of an illegal lot, but City staff and the City Attorney would work with citizen-victims to resolve the matter if possible.

ILLEGAL LOT SALE SPURS LAWSUIT

JANUARY 2003: BY JOAN BJARKO
NORTH FORTY NEWS

A Colorado native with dreams of living simply on a piece of rural land is instead living in a nightmare of financial complications because Larimer County says he purchased an illegal lot.

HOW ARE NONCONFORMING PROVISIONS APPLIED? |

Since most structures, uses and lots in a city conform to the code, the application of nonconforming regulations occur infrequently. For most cases, nonconformities are allowed to continue until the end of their economic life when they are *voluntarily replaced* with a conforming structure, use or lot.¹⁰ Although the adoption of new regulations does not typically include a requirement for an immediate discontinuance

⁹ *Gardner v. County of Sonoma*, No. S102249, 03 C.D.O.S. 2003 DJDAR 1429 (2003) - The California Supreme Court clarified that maps recorded prior to 1893 do not create legal, developable lots for today's purposes. And the court at least hinted that maps recorded between 1893 and 1929 might not be valid unless a city or county somehow exercised discretion in approving the map.

¹⁰ *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 453 (1954) – an appeals court ruled that it “is generally held that a zoning ordinance may not operate to immediately suppress or remove from a particular district an otherwise lawful business or use already established therein.” The court also ruled that a City may establish shorter timeframes for the nonconformity to be removed.

of an otherwise lawfully established structure, use or lot,¹¹ a new zoning ordinance may compel the elimination of a nonconformity over a reasonable period of time through the establishment of an amortization period or “sunset clause” allowing the owner the opportunity to recoup some portion of his or her investment in the structure, use, or lot prior to the structure, use or lot being terminated.¹² For some communities, the quick elimination of a certain type of legal nonconformity is a high priority, and a shorter amortization period is established to facilitate quicker compliance (e.g. elimination of improperly zoned adult businesses, or removal of billboard signage, etc.).¹³

- **Enlargement, Repair, and Destruction of Nonconformities** - Any change in a nonconforming structure, use or lot that could extend the economic life, give permanency to, or expand the nonconformity would not be consistent with the community’s overall purpose and goal of eventually eliminating all nonconformities.¹⁴



- **Nonconforming structures may not be enlarged or altered unless the alteration brings the property into conformance.**¹⁵ Again, the point of the nonconforming provisions is to protect a property right of an existing structure while preventing an extension of the economic life of the nonconforming structure, so that it is eventually replaced with a conforming structure.

Because the Zoning Code has changed over time, some older structures are nonconforming. If strictly applied, the City’s nonconforming regulations would discourage the expansion or alteration of historic resources, indirectly influencing some owners to possibly seek their demolition and replacement. The City of Tustin has an ongoing interest in supporting the preservation of important historic resources. Consequently, the Tustin City Code provides an exception for recognized nonconforming historic structures (structures listed on the City’s Cultural Resources Survey) to support the community’s goal to extend the economic life of these important historic resources. Allowing some modernization of historic structures encourages the preservation of the property to

¹¹ *City of Los Angeles v. Wolfe*, 6 Cal. 3d 326, 337 (1971) – the State Supreme Court ruled that “enforced relinquishment is inequitable...”

¹² *National Advertising Company v. County of Monterrey*, - the State Supreme Court ruled that City-established amortization periods were an acceptable means of eliminating nonconformities within a “reasonable time.”

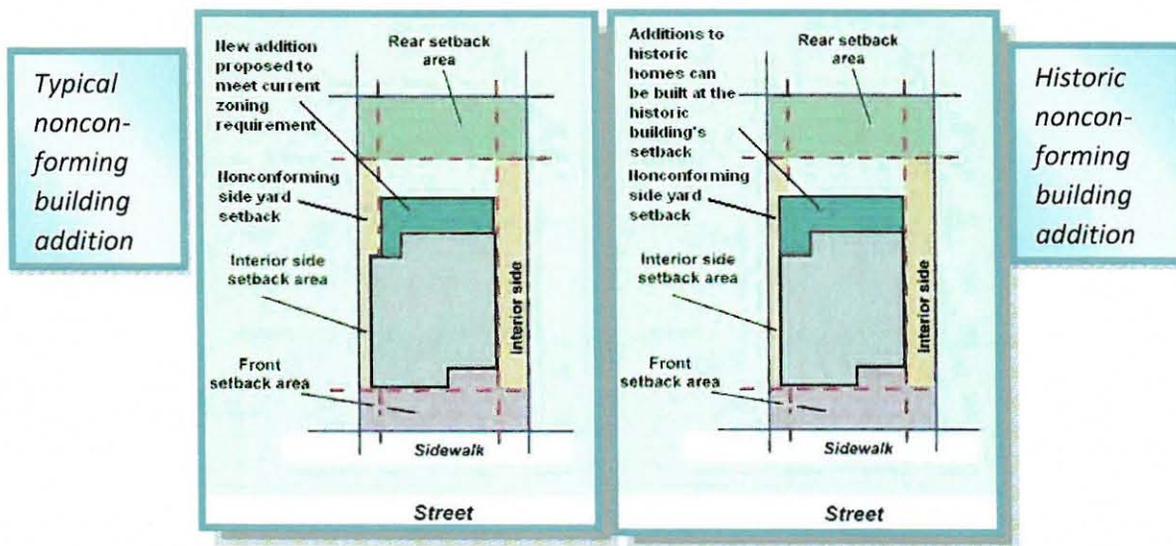
¹³ *Baby Tam v. City of Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) – The United States Court of Appeals determined that an adult bookstore was required to comply with the City of Las Vegas’ zoning and licensing requirements even though the bookstore was established prior to the adoption of the City’s requirements for the business.

¹⁴ *Dienelt v. County of Monterrey*, 113 Cal. App. 2d 128, 131 (1952) – an appeals court ruled that a City may restrict the extent of additions to a nonconforming structure.

¹⁵ *County of San Diego v. McClurken*, 37 Cal. 2d 128, 131 (1952) – an appeals court ruled that a City ordinance that did not permit the enlargement of nonconforming use was lawful and consistent with the intent to gradually eliminate nonconformities.

be much more attractive, especially given the market trend for larger homes, businesses, etc. The current Code provisions/exceptions are as follows:

- ❖ TCC Section 9264b of the Tustin City Code allows recognized historic residential properties to propose additions or alterations without being required to be brought fully into compliance with the requirement for a two-car garage when it can be shown that insufficient space is available on the site.
- ❖ TCC Section 9271p allows building additions to recognized historic residential structures to continue the same setback as the historic structure.



- **Nonconforming structures may be repaired, but extensive repairs are typically not allowed** - For example, a nonconforming structure would be required to be made conforming if it is ever accidentally destroyed by fire, earthquake, etc.¹⁶ Most nonconforming codes include a threshold that triggers the need for a nonconformity to become more conforming at the time of a proposed repair or destruction.¹⁷ For Tustin, a nonconforming structure may be repaired, or replaced as long as the improvements do not exceed 50% of the building's assessed valuation, as shown on the

¹⁶ *Ricciardi v. County of Los Angeles*, 115 Cal. App. 2d 569, 576-577 (1953) – an appeals court ruled that a City ordinance may restrict the extent of repairs to a nonconforming structure.

¹⁷ *Hansen Brothers Enterprises v. Nevada County*, 12 Cal. 4th 533, 48 Cal. Rptr. 2d 778 (1996) – The California Court of Appeals determined that a mining company had a vested right to continue to engage in surface mining activity as a nonconforming use under a zoning ordinance.



County Assessor tax roll.¹⁸ When it can be shown that the cost of repairing a nonconforming structure destroyed is more than 50% of its assessed value, the structure must be made conforming. However, California Government Code Section 65852.25(a) exempts multifamily residential dwellings destroyed by fire and Government Code Section 43007 partially compensates an owner for the destruction and subsequent removal of a nonconforming structure by allowing property tax relief to owners of a destroyed property that cannot be rebuilt

because of zoning prohibitions. Again, the point of the requirement is to prevent an extension of the economic life of a nonconforming *structure*, until such time that it would eventually be replaced with a conforming structure.

- **A legal nonconforming use may be replaced by the same or similar nonconforming use.** When structural alterations are proposed to a building containing a nonconforming use, the nonconforming use must be replaced with a conforming use. If a nonconforming use is ever replaced with a conforming use, *the nonconforming use may never be reestablished at the site*, accomplishing the goal of gradual elimination of nonconformities. Again, the point of the requirement is to prevent an extension of the economic life of a nonconforming *use*, so that it is eventually replaced with a conforming use.

Legal non-conforming uses may be considered abandoned. Absent any specific amortization period, the courts have ruled a use that has been discontinued for seven years is evidence by itself of the owner's intent to abandon the use.¹⁹ However, the City's nonconforming regulations state that a



¹⁸ *Manhattan Sepulveda v. City of Manhattan Beach*, 22 Cal. App. 4th 865 (1994) – The California Court of Appeals determined that the 50% rule should be defined as the fair market value of the structure at the time of the fire, not 50% of the cost for replacement of the structure.

¹⁹ *Stokes v. Board of Permit Appeals*, 52 Cal. App. 4th 1348, 61 Cal. Rptr. 2d 181 (1997) – The California Court of Appeals determined that the owner of a business had voluntarily abandoned the use of a property and subsequently lost any vested right to the nonconformity.



nonconforming use that ceases to operate for a period of one (1) year or more, or is changed to be a conforming use, is considered abandoned and may not be reestablished at the location. Vacant structures or lots are not restricted in this manner.

HOW ILLEGAL STRUCTURES, USES AND LOTS ARE IDENTIFIED AND ADDRESSED |

Illegal structures, uses and lots come to the attention of City staff in a number of ways. The most common method is when a property owner approaches staff to propose an alteration of or addition to an existing structure (this includes when an owner desires to rebuild a structure damaged in a disaster). Another is when a real estate professional, mortgage lender, or prospective buyer contacts the City and requests documentation that room additions, etc. have been added legally. Another is when a property owner is seeking Mills Act property tax relief for a historic property and invites staff to the site.

Illegal structures, uses and lots also come to the attention of the City's Code enforcement staff through complaints. Except for proactive neighborhood improvement efforts conducted in cooperation with the Tustin Police Department, City code enforcement is nearly always performed on a complaint basis only. Potentially unauthorized structures, uses or lots are brought to the attention of code enforcement staff through complaints and referrals from the following sources:

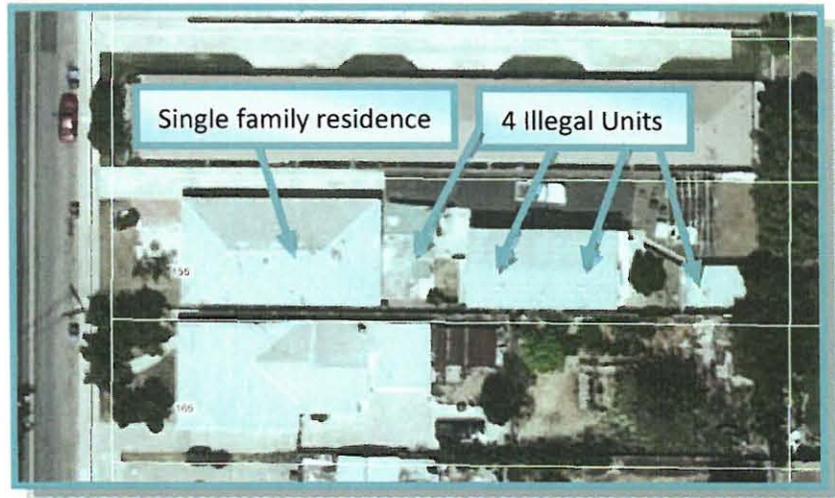
- Neighbor complaints
- Orange County Fire Authority or other County agency staff
- Tustin Police Department referral
- City plan check or building inspectors
- OC Health Department
- City Business License staff
- County fictitious business name clerk
- Real estate professionals including requests by lending institutions
- The property's owners
- Tenants
- Utility providers
- Code Enforcement
- Staff inspection following fires and other disasters
- Others



When a potentially unauthorized structure, use or lot is identified, staff will confirm that the concern exists by visiting the site or by viewing plans, aerial photographs, etc. If a violation appears to exist at the site, staff will perform much more exhaustive research into the history of the potentially unauthorized structure, use or lot, to attempt to determine when it was added to the site, and whether it was lawfully established.

Staff often considers the following when attempting to develop a “whole record” by which to determine whether a potentially unauthorized structure, use or lot is legal or illegal:

- Building permits, Occupancy Permit, Variances, or other official records.
- County Tax Assessor records
- Property Title Reports and/or Record of Deed
- Historic photographs, aerials
- Historic phone books
- Water billing records
- Sewer connection records
- Other utility records (electrical, gas, etc.)
- Business license records
- Historic newspaper records
- Historic surveys or registers
- Historic Sanborn fire insurance maps
- Subdivision maps
- Written histories/letters from prior owners, residents, etc.
- Other evidence presented by the owner and/or occupants
- Other documents as may be available
- Physical inspection of the construction methodology, materials, etc. to determine whether the structure complied with building codes at the time of construction (see discussion below).
- As needed, request an independent licensed/qualified architect experienced to perform a site assessment.



City staff will always assist an owner in reviewing City records when available. In some cases, an owner may have additional official or unofficial records that may assist City staff in determining whether a particular structure, use or lot is or is legal. If, at the conclusion of staff review, the potentially unauthorized structure is determined to be lawfully established, pertinent information would be added to the City’s records documenting that fact, and the matter would be closed. However, if staff review concludes that a structure, use or lot appears to be illegal, cannot be





permitted, has not been constructed using conventional construction methods, etc., the property owner will be officially requested to correct the concern.

When informed by staff that an addition/alteration appears to be illegal, an owner will often pursue the matter further. Sometimes an owner will request another inspection of a potentially unauthorized structure by a City building inspector to ascertain whether the potentially unauthorized building improvements were done consistent with the Building Code adopted at the time of construction. A building inspector would typically visit the site to observe major life/safety related discrepancies in the workmanship and materials used to determine whether the work would have been in compliance with the Building Code requirements adopted at the time that the improvements were made (e.g. the addition did not have a foundation; electrical, water, sewer and gas installation was hazardous; required fire separation between units or floors was not installed, etc.). *Note: a structure built consistent with the Building Code adopted at the time is evidence, considered with the whole record that a structure may have been lawfully established at the time. Again, compliance with the Building Code means that the person constructing the structure was knowledgeable of the Building Code, not that the structure was built legally. However, it is more likely that the opposite would occur, e.g. City inspection of a potentially unauthorized structure could result in the identification of tell-tale Building Code inconsistencies/violations that prove beyond a doubt that the structure was illegally constructed.* Based upon a staff survey of the 34 Orange County cities, it is standard practice to use such inspection/investigative routines.

Current owners of the property may not have personally caused the illegal structure to be built. In fact, the owner may have purchased the property with an understanding that the property was legal. However, the current property owner bears full responsibility for establishing that their structure, use or lot is lawfully established. In response to the City's request to correct an illegal structure, some owners work with staff to legalize it "after the fact." Others may work with staff to remove the illegal structure. Under California law, affected owners may have legal recourse against a prior owner, real estate agent, or property title company for a failure to disclose the potentially illegal nature of a structure or addition.

ACTUAL CASE EXAMPLE |

The following facts have been taken from current or past code enforcement cases to illustrate the research and records review methodology currently utilized by Community Development Department staff in order to determine the legality of potentially unauthorized structures, uses or lots. The information discussed below is true, but does not pertain to any one particular property in order to preserve the Planning Commission's objectivity in considering any future code enforcement case appeal.



- Staff receives a complaint that an illegal apartment is alleged to have been added to the rear of a single family home.
- Permit records are researched by staff. Recent re-roof permit issued for single family house, inspected and given final approval. City inspector did not raise a concern at this time.
- Sewer permit records researched. Connection authorized in 1962 for a single family residence.
- Water billing records researched. Water billing is based upon the number of units requested identified on the site by the owner/applicant. Water bill indicates five units served on the site.
- Planning records researched. Property owner applied for zone change in 1968 from R-1 to R-3 to allow five units on the property. Planning Commission denied the request; property owner appealed to City Council; City Council denied the appeal stating that the property should continue to be used as a single family residence.
- Deed and property title researched. Property identified as single family residence.
- Building identified on the City's 2003 Cultural Resources Survey as a significant Craftsman style residence built in 1922. Survey indicates single family home in front and garage at rear of property converted to living quarters. *Note: the Cultural Resources Survey was prepared by a City consultant that performed the survey from the public sidewalk only. No physical on-site inspections were conducted at that time.*
- Business license records researched. Property owner does not hold a City Business License required for multifamily properties totaling four units or more.
- Current property tax information reviewed. Property owner is paying property tax on improvements described as "multifamily" with three units.
- Code enforcement performs a cursory inspection of the property with the permission of the property owner. Eight units exist at the site. Original single family house exists at the front of the property that is divided into four units. A detached garage is at the rear of the property that has been converted into two residential units. Two additional unit appears to be an illegally converted patio enclosure (the exterior walls



are thin and light is visible from the interior rooms between the bottom of the walls and the concrete floor – the rooms appear to have no foundation). One of the units has a dirt floor. An additional shed-unit (unit #9) is currently being constructed (the source of the current complaint) at the rear of the converted patio enclosure unit that extends to the rear wall, illegally within the side and rear setback. Electricity is provided to the new unit via an orange electrical cord draped across the roof of the unit. Children are observed playing in the area. Two of the existing units have no toilet, shower facilities, or kitchen. No covered parking is provided anywhere on site – residents park on a dirt portion of the lot, or the public street. Laundry room has been illegally added to garage structure.

- A building inspector inspects the structures to determine whether the buildings were built in compliance with the code adopted at the time of construction. Some units have bedrooms without windows, presenting Building Code light and ventilation concerns and fire safety violations since these rooms have no second means of exit during a fire emergency. The foundation and exterior walls appear to be failing. interior support beams may be clear inconsistencies in workmanship, methods, materials, etc. are noted as clearly in violation of the State Building Code. City inspector determines that all additions to the original single family home were illegally added and that they are potentially unsafe to the occupants and surrounding properties.



- Original complainant is questioned by staff. Complainant indicates that five units have existed on the property since 1959, but that the owner was “a good neighbor” so complainant didn’t want to cause problems. Original owner sold property last year and retired out of state. Complainant heard new owner adding the additional unit #9 at the rear of the property so complaint was filed.

Again, once the structure is determined to have been illegally established, and the construction methodology, materials or workmanship are not consistent with the requirements of the Building Code in effect at the time of construction, the owner would be required to correct the violation. Upgrades may be determined necessary to support the safe use of an illegally established nonconforming structure. The owner would be required to submit plans and documentation to make the nonconforming structure safe for habitation or occupancy for the intended use. This documentation is typically in the form of reports or plans prepared and certified by a licensed building design professional (e.g. architect, structural engineer, etc.). Compliance with zoning requirements may also be required.



The California Building Code mandates that health and safety issues associated with the illegal use of the structure be corrected. Left uncorrected, the violations could pose legal liabilities upon the City or more importantly would leave the building's occupants and surrounding residents or businesses at significant risk. Thus, the property owner must provide sufficient documentation as determined by the Director of Community Development and Building Official to determine that an illegal structure is safe for habitation or occupancy for the intended or modified use (as may be approved by the City) as previously described above.

A similar approach is utilized in researching potentially unauthorized uses or lots. Along with the property owner, staff would perform significant research that can include business license and/or property tax information, business transaction receipts, utility statements, dated historic and aerial photographs, even historic telephone books can be used to establish a history of a use or lot.



Nonconforming Billboard

CONCLUSION |

All legal nonconforming structures, uses or lots were lawfully established under the codes at the time, but due to the adoption of a new ordinance or map revision, the property no longer conforms to the policies and standards of the code in which the property resides. A structure, use or lot that is out of conformance with the adopted code is *not* considered to be nonconforming when it has been illegally established.

The spirit of the City's nonconforming provisions is to allow nonconformities to continue to exist, but not increase. With the exception of qualified historic resources, intensification or expansion of an existing nonconforming use is not permitted, and is even discouraged. The legal basis for all land use regulation is the police power of a city to protect the public health, safety, and welfare of its citizens. And, the legality of City enforcement of these provisions has been tested and proven in court. Zoning laws look to the future to ensure that all nonconformities are eventually brought into conformance or replaced. Any change in the premises which tends to give permanency to or expands the nonconformance would not be consistent with this purpose.

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422
213.620.1780 main
213.620.1398 main fax
www.sheppardmullin.com

Writer's Direct Line: 213-617-4216
jrubens@sheppardmullin.com

October 21, 2015

Our File Number: 40VY-220774

BY EMAIL AND U.S. MAIL

Mr. Steven A. Mendoza
Community Development Director
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, California 90720

Re: City-Initiated Consideration of Amendments to Chapter 17.64
(Nonconforming Uses and Structures) of the Municipal Code

Dear Mr. Mendoza:

This firm represents Katella Property Owner, LLC ("KPO"), which owns the real property located at 3131 Katella Avenue, Los Alamitos (the "Property"). The improvements on the Property include two office buildings (the "Office Buildings").

KPO has requested our assistance in connection with a resolution adopted by the Los Alamitos Planning Commission (the "Planning Commission") at its meeting on September 23, 2015, pursuant to which the Planning Commission directed staff to prepare draft amendments to Chapter 17.64 (Nonconforming Uses and Structures) of the Los Alamitos Municipal Code (the "Chapter 17.64 Amendments").

As you know, earlier this year, the Los Alamitos City Council adopted the City of Los Alamitos General Plan Update and, subsequently, corresponding zone changes. As a result of those actions, the land use designation for the Property was changed from "General Office" to "Retail Business" and the zoning designation was changed from "Commercial Professional Office (C-O)" to "General Commercial (C-G)". These new designations may not permit office use, notwithstanding that the Office Buildings are in good condition and have always been devoted to office use, and that the highest and best use for the Property remains office use.

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Therefore, the City could take the position that the current office use is now a legal nonconforming use that is subject to the provisions of Chapter 17.64. For discussion purposes, we assume below, without conceding, that this is the case.

When KPO officials first learned that the General Plan Update had changed the land use designation for the Property, and that the City Council was about to change the zoning designation, they approached the City with their significant concerns and requested that the City restore the General Office land use designation for the property and add a "Retail Overlay" designation, so that both office and retail uses would be permitted on the Property, just as the City did for the Arrowhead Products property and another property as part of the General Plan Update.

At that time, we understand you advised KPO that the City did not want to modify the land use designation for the Property (and that it wanted to proceed with the corresponding zone change), but indicated that you would work with KPO to allow the current office use to continue without risk of an early termination.

Against that background, the Planning Commission has now initiated consideration of the Chapter 17.64 Amendments. As currently written, Chapter 17.64 provides the means for KPO to extend the minimum amortization period with respect to the current office use to allow KPO a reasonable amortization period (which KPO believes should be a minimum of 50 years), consistent with California law. Having said that, we agree with the Planning Commission and staff that the provisions in Chapter 17.64 are confusing and ambiguous in some respects.

More important, and as the Planning Commission has previously discussed at length, Chapter 17.64 is also fundamentally unfair and likely unlawful, and it discourages investment in the community. At its May 13, 2013 meeting, the Planning Commission considered whether to recommend a Retail Overlay designation for the Arrowhead Products property (a copy of the excerpted meeting minutes is attached as Exhibit 1). The Planning Commission was concerned that, if the land use designation was changed to Retail Business, the existing industrial use on the Arrowhead Products property would become a legal nonconforming use. The Planning Commission did not think this was appropriate because, among other things, pursuant to Chapter 17.64, that nonconforming use would terminate in 10 years and create potential liability for the City. The adoption of a Retail Overlay designation would have avoided that result.

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The meeting minutes from the May 13, 2013 meeting include the following summary of Assistant City Attorney Lisa Kranitz's comments:

"Under [Chapter 17.64], basically a use that becomes non-conforming has ten years from the date it becomes non-conforming to go away. For much of the changes the Commission will be making, unless a different amortization schedule is adopted by the Commission, they have ten years to go. While the use could technically ask for a CUP to expand, in reality it will never happen due to obtaining financing because banks don't want to lend money on a conditional use that's going to expire in ten years. If Arrowhead really didn't want to leave, the City could be looking at litigation. So what will happen is that these businesses will start looking for a different location to move to leaving empty, blighted buildings."

A majority of the Planning Commissioners concurred with those sentiments. At the conclusion of the discussion, the Planning Commission approved a motion to recommend that the land use designation for the Arrowhead Products property be changed to Retail Business, but that the City provide a 50-year amortization period.

This issue became moot in the context of the Arrowhead Products property because the City Council eventually decided not to change its land use designation to Retail Business, but the Planning Commission's discussion applies with full force to KPO's Property because the General Plan Update **did** change the land use designation for the KPO's Property to Retail Business, followed by the corresponding zone change.

These are the same concerns that KPO officials have raised in their correspondence and meetings with the City. As they have explained to you and other City officials, KPO cannot obtain financing to upgrade the Office Buildings and the Property while even the potential exists for the termination of the existing office use in the foreseeable future. That in turn means that KPO's ability to attract and maintain high-quality tenants and bring jobs to Los Alamitos will be significantly diminished, which will depress the value of the Property. This is a needless lose-lose scenario for the City and KPO and exposes the City to potential liability, as Ms. Kranitz and the Planning Commission openly acknowledged at the May 13, 2013 hearing.

Therefore, we hope and expect that the Planning Commission has initiated the preparation of the Chapter 17.64 Amendments in part to address the significant issues

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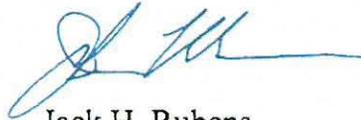
raised at its May 13 meeting. In that regard, on behalf of KPO, we respectfully request that the amendments include one or both of the following concepts:

1. With respect to the zone changes initiated by the City in connection with the General Plan Update that established legal nonconforming uses, the amortization period for those legal nonconforming uses shall be a minimum of 50 years. This is consistent with the Planning Commission's May 13 motion.

2. With respect to any zone changes initiated by the City in connection with the General plan Update that established legal nonconforming uses, Chapter 17.64 shall not apply and the nonconforming uses shall be allowed to remain indefinitely and to expand. This is not a new concept either. As one recent example, the City of Orange did exactly this in connection with its 2010 General Plan Update and Accompanying Zone Changes (see Exhibit 2), and we strongly suspect that other municipalities have adopted similar zoning ordinances.

Thank you for your serious consideration of these requests. KPO looks forward to working with the City to ensure that the Chapter 17.64 Amendments provide a more certain mechanism to allow the current office use on the Property to continue indefinitely, to their mutual benefit.

Very truly yours,



Jack H. Rubens

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH-473398899.3

cc: Mr. Kevin Hayes (w/encls.) (BY EMAIL)
Mr. Parke Miller (w/encls.) (BY EMAIL)
Lisa E. Kranitz, Esq. (w/encls.) (BY EMAIL)

EXHIBIT 1

Commissioner Sofelkanik asked if the Base visioning would be the right venue to have discussions of doing an overlay on the Base. Community Development Director Mendoza indicated that when we get to that, yes it would, but only after we've completed the General Plan.

Assistant City Attorney Lisa Kranitz reported that Community Development Director Mendoza posed the question to her as to what would happen to Arrowhead if the General Plan were changed; is it a requirement of consistency between the zoning and the General Plan land use designation? Once the General Plan is changed, she assumes that zone changes will be coming on the heels of the General Plan Amendment if not with it so that the General Plan and the zoning are consistent. Under the City's code, basically a use that becomes non-conforming has ten years from the date it becomes non-conforming to go away. For much of the changes the Commission will be making, unless a different amortization schedule is adopted by the Commission, they have ten years to go. While the use could technically ask for a CUP to expand, in reality it will never happen due to obtaining financing because banks don't want to lend money on a conditional use that's going to expire in ten years. If Arrowhead really didn't want to leave, the City could be looking at litigation. So what will happen is that these businesses will start looking for a different location to move to leaving empty, blighted buildings.

Commissioner DeBolt said it seems to him that the change in land use wouldn't necessarily trigger at ten years; it just seems too short. Maybe we could change the code or recommend a modification.

Chair Grose pointed out that even if we modify the code, are we not setting ourselves up for potential law suits?

Ms. Kranitz asked Community Development Director Mendoza if it was the plan to bring simultaneous zoning changes. Director Mendoza responded that zoning changes would follow. Ms. Kranitz said that basically until the zoning's consistent, the development is sort of at a standstill.

Chair Grose said yet if they did nothing and perhaps nine or so years passes and suddenly Arrowhead says to us, "We're actually going to move somewhere else and we're going to sale this property", we can actually go in at that time and change the zone over to Retail for our benefit. Ms. Kranitz confirmed this was true. Chair Grose further commented that doing that now in that respect and hindering them would be absolutely stupid. By allowing it to stay the way it is, Planned Industrial, this allows us to stay out of litigation; it allows them to stay as they are, get loans for whatever they need. Ms. Kranitz confirmed this and added the EIR can look at that as the other use so come time, if they move, the Environmental Review is already done and it speeds up the process because generally in these types of cases, it's the Environmental Review that is the slowest part of the process.

Commissioner DeBolt said he thinks we're worrying about something that is not our worry. He thinks that a ten year time frame is obviously too short and he feels it would be wise to know what other cities do on these. If some of them have no time frame or if you can go out thirty or fifty more years that alleviates the problem of financing which he doesn't think we have to worry about; that's their problem. He thinks what the Commission has to do is what they think is best for the City in the long term as far as the Plan and when we recognize the problems, such as this ten year period, those need to get fixed before we change the zone. We have non-conforming uses all over the City; do they all have ten years to tear down their buildings? If we eliminate the road blocks, the ones that are just glaring, like the ten year rule, and that doesn't mean throw it out altogether, you give them 30 years as he thinks 10 years is too short in any event.

Ms. Kranitz said that another thing the Commission wants to look at is a lot of cities differentiate between non-conforming use of land, non-conforming use of buildings and then essentially if it's a use on vacant land.

Commissioner DeBolt's concern is that if Arrowhead decides to leave, that that area is zoned appropriately so that we don't end up with some kind of use there that we don't want to have. Question: How do we accommodate the goal of letting Arrowhead stay there for as long as they want but if they ever decide to leave, we want it to remain Retail?

Responding to the Commission's question regarding whether or not anybody has spoken to Arrowhead about this issue, Community Development Director Mendoza said they had and Arrowhead didn't want the property rezoned; they didn't think they had to worry about it. Community Development Director Mendoza asked Ms. Kranitz if an amortization schedule could be placed in the zoning code that impacts only 2013 General Plan designations and she said yes.

Community Development Mendoza said the Commission is changing the General Plan in 2013 and it sounds as though they want a special amortization schedule. In response to the question of why not do all of this across the board, Mr. Mendoza said he doesn't know if they want to start the clock for other uses and structures that have already been put out in the code maybe in 2006 or other times. Since the Planning Commission is concerned with the impacts of their decisions tonight, perhaps some special language that allows their decisions to keep the City out of hot water by extending or having a different amortization schedule is appropriate.

The Commission agreed.

Commissioner DeBolt said maybe the amortization period should get a restart with 2013. He further thought that the amortization period for Arrowhead shouldn't be ten years but forever because when Arrowhead leaves, then that use leaves with them and asked if that's correct.

Community Development Director Mendoza indicated that that's true unless another aerospace company comes into that building, then they could stay because of the same use.

Responding to the Commission's question as to what would happen if Arrowhead wanted to expand their business, Ms. Kranitz explained that right now the way the code is currently written, once the Arrowhead property becomes a non-conforming use, they can't physically expand the use without a CUP. Also, if the Commission changes the property to a Commercial/Business land use designation and puts in a 30 or 50 year amortization, then the use can transfer but any expansion of the building would need a CUP and, a CUP can be denied.

Commissioner Sofelkanik asked if we could have an amortization schedule of ten years that is different for non-conforming structural, and then for a non-conforming use, put fifty years or another time limit on it, Ms. Kranitz indicated that that could definitely be done and it's quite common to have different schedules for structures versus uses because structures usually involve, if it's non-conforming, health, safety, etc. concerns. Our code is somewhat confusing as written currently and could use some clean up in general.

Commissioner DeBolt made a motion that with respect to the Arrowhead property, we designate it as Retail Business and prior to the implementation, when we get into the zone portion of this, we change the amortization period specifically to that site to a 50-year amortization period prior to the General Plan being adopted.

Commissioner Sofelkanik seconded the motion.

In response to Commissioner Daniel's question, Community Development Director Mendoza responded by saying when Staff looked at the opportunity sites, they looked at sites that were either underutilized, for sale, in escrow or desired changes to their site.

Commissioner Daniel questioned what do we really gain by doing this at this time? On one hand, it's like who gives a damn what Arrowhead thinks; what do we care? On the other hand, yeah, we do care because that's kind of why we're in some of the situations we are in because we haven't always been the most business friendly community. He said either way, it's got its pluses and minuses; it's not a clear cut decision and he's leaning towards, "Is it worth it?"

Chair Grose indicated she's on both sides of the fence as well. One, what message do we send to other businesses when we kind of want to rezone what they are, especially on a business at the moment that has no intention of selling and they employ a lot of people. We've got to stop the negative image and she thinks that's exactly what the Commission is doing here. We're looking at rezoning something that could have an impact on the business; it could impact

them getting a loan. They have to get a CUP in the future but who knows who's on the Council or the Commission at that time or who cares? Is she concerned that if Arrowhead decides to sell and go somewhere that this property could sit vacant? Yes, she is.

Ms. Kranitz said she wanted to point out that tonight; the Commission is not making a final decision on this recommendation. What the Commission is doing is giving Staff recommendations on which way to go. Again, just because the EIR is approved, it doesn't mean the Commission has to make all those changes. This is going to be brought back for a fully noticed public hearing with notice given to the property owners and that's going to let the Commission hear from not only the Arrowhead people but people in all zones when they get the notice that their property is being subject to a General Plan amendment. At that point, the Commission can change their recommendation but Staff needs some direction to go in to move forward.

Chair Grose said she would rather get Arrowhead's input before making a decision.

Ms. Kranitz indicated the Commission will get Arrowhead's input at the public hearing. Before the Commission sends their recommendation to the City Council, the Commission can change what's in the Draft. The Commission is not really approving anything tonight; it's just giving direction as to what to study in the document and what it should say.

Community Development Director Mendoza explained that it gives the Commission the freedom to study something. You want to know the impacts. You can't answer questions regarding impacts until you have the results of the EIR.

Vice Chair Loe pointed out that this is a General Plan and it should be a General Plan of the whole city and the Commission is focusing only on Arrowhead.

Chair Grose asked for the Motion to be read once again by Commissioner DeBolt. It is as follows:

Recommendation: Designate the Arrowhead property as a Retail Business zone and that we extend the amortization period and make it a 50 year amortization period.

Motion/Second: DeBolt/Sofelkanik

Carried 4/2/1 (Commissioners Daniel and Riley voted no; Commissioner Sutherlin abstained).

EXHIBIT 2

17.38.065 Regulations for Properties Made Nonconforming by the 2010 General Plan Update and Accompanying Zoning Changes.

The following provisions apply exclusively to property which is made nonconforming by General Plan Amendment No. 2009-001 and zoning changes accompanying General Plan Amendment No. 2009-001 (hereafter, collectively referred to as General Plan Zoning), which properties are included on the map of "Properties Made Non-Conforming by the 2010 General Plan Update and Accompanying Zone Changes" (hereafter, map), which Map shall be a public record, be provided to all property owners whose property is on the map and be on file with the Community Development Director.

- A. **Nonconforming Use of a Conforming or Nonconforming Development.**
 - 1. A legally established use on property that is depicted on the map which because of general plan zoning is no longer permitted in a particular zone shall be considered a nonconforming use.
 - 2. A nonconforming use shall be allowed to remain indefinitely, and can be replaced by a similar nonconforming use provided the Community Development Director finds that the proposed use is equal to or more appropriate than the existing nonconforming use. With respect to property previously zoned Commercial Recreation the Director's findings shall be based upon reference to the use provisions contained in the M-1 (Light Manufacturing) and M-2 (Industrial) Districts. Manufacturing uses on property previously zoned Commercial Recreation that contain retail or office space consisting of more than twenty-five (25) percent of the gross floor area shall be determined as an equal to or more appropriate use, provided the use complies with the City's parking ordinance.
 - 3. A nonconforming use shall be allowed to expand within a conforming or nonconforming parcel. When the expansion of a nonconforming use requires an alteration of buildings or site improvements, the building addition, additional structures or site improvements shall comply with the requirements contained herein, and all applicable requirements of the Orange Municipal Code.
- B. **Nonconforming Development Containing a Conforming or Nonconforming Use.**
 - 1. A legally constructed development which because of general plan zoning is no longer in compliance with the zoning development standards shall be considered a nonconforming development.
 - 2. A nonconforming development shall be allowed to remain indefinitely.
 - 3. A nonconforming development shall be allowed to be routinely repaired to maintain public health, safety and general welfare.
 - 4. A nonconforming development shall be allowed to expand provided that the expansion complies with the requirements contained herein, and all applicable requirements of the Orange Municipal Code.
 - 5. Existing nonconforming industrial development within the Katella Avenue Corridor project area that was established prior to Zone Change 1177-95 shall be governed by the M-1 and M-2 provisions.
- C. **Repair of Damaged or Destroyed Nonconforming Developments.**
 - 1. A nonconforming development that is damaged or destroyed shall be permitted to be repaired or reconstructed to the condition which existed prior to such damage or destruction, provided the structure or building existed as a legally established development.
 - 2. Repair or reconstruction of a legally established nonconforming development shall not be limited to any specific time constraint that is not applied to repair or reconstruction of conforming development, provided that public health and safety issues are addressed.
- D. **Moving a Nonconforming Structure or Building.** A nonconforming structure or building shall be allowed to be moved provided doing so will cause the structure or building to become conforming.
- E. **Residential property made nonconforming by the general plan zoning.** Any residential property that is made nonconforming by the general plan zoning may, notwithstanding OMC Section 17.38.030B, be permitted to continue unless such nonconforming use is discontinued, voluntarily or involuntarily, for more than 24 months.